

(1990) 09 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 7526 of 1983

Dandeli Ferro Alloys Private Ltd.

APPELLANT

Vs

Karnataka Electricity Board

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Electricity (Supply) Act, 1948 — Section 2 (1), 49, 78 A

Citation : (1991) ILR (Kar) 1164 : (1991) 1 KarLJ 302

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; V.N. Sathyanarayana, for R-1 and Sateesh M. Doddamani, HCGP for R-2, for the Respondent

Judgement

Balakrishna, J.—The Dandeli Ferro Alloys Private Limited is one among three electro-metallurgical industrial undertakings producing Ferro Alloys in the State of Karnataka, the other two being Visvesvaraya Iron and Steel Limited (VISL) and Sandur Manganese and Iron Ores Limited (SMIORE). The Karnataka Electricity Board and VISL on the one hand and the Board and SMIORE on the other had entered into Special Agreements for the supply of electrical power and under the agreements the two industrial undertakings enjoyed the benefit of special tariff of 5.05 ps. per KWH which was subject to revision once in 5 years in accordance with the prescribed formula. It is asserted that the petitioner being similarly situate, represented to the State Government and not to the Board against the inequitable power tariff made applicable to the petitioner in contrast with the other two industrial undertakings and pleaded for fair treatment instead of discrimination. It is also stated that the petitioner made an issue of the preferential treatment given to the other two undertakings which had an adverse impact on the business of the petitioner - Company, Hence the petitioner requested the State Government to confer the same benefit of special tariff which had been extended to other two industrial units. On a detailed consideration of the representation of the petitioner, the State Government passed an order dated 26-9-1979 authorising the Board to enter into a Special

Agreement with the petitioner for the period commencing from 1-10-1979 till 30-12-1979 for supply of electrical energy not at the rate of 5.05 ps. per KWH but at the rate of 12.71 ps. per KWH. subject to monthly minimum charge calculated in accordance with the provisions contained in the Special Agreements already in force with the other two units. It is stated that the Board was also authorised to negotiate the rates and conditions to be made applicable with effect from (SIC) 1980 in line with the aforesaid Special Agreements. The said order of the State Government is Annexure-A.

2. In pursuance of the said Government Order, the Board passed a Resolution No. 13179 on 24-11-1979. In accordance with the Resolution, the Board called upon the petitioner to furnish a draft Agreement. The petitioner prepared the draft Agreement and the Chief Engineer, Electricity, (General) by letter dated 6-12-1979 informed the petitioner that a decision had been taken by the Board to apply the rate of 12.71 ps. per unit for a period of 92 days from 1-10-1979 to 31-12-1979 (both days inclusive). The Managing Director of the petitioner-Company was asked to go over to the office of the Board for execution of the Agreement on 7-12-1979 and also for signing the same. The petitioner was also given an indication in the aforesaid letter that the Board had authorised its office to negotiate with the petitioner regarding the special rate to commence from 1-1-1980 and onwards in conformity with what had been done in respect of the other two units.

3. The petitioner entered into an Agreement with the Board for a period of 92 days from 1-10-1979 to 31-12-1979 and as regards the entering into an Agreement for the period commencing from 1-1-1980, the Managing Director of the petitioner called on the Chief Engineer, Electricity, (General) on 8-12-1979 for a discussion regarding the rate for a further period of 5 years on similar terms as those of the other two undertakings. It appears that the Chief Engineer, Electricity, (General) assured the petitioner that the communication would be sent to him for executing an Agreement. It is stated that nothing was heard from the Board thereafter for a considerable time and the petitioner wrote to the Board a letter on 23-9-1980 calling attention to the Government Order and also to the requirements for the purpose of entering into a long term Agreement as authorised in the Government Order under Annexure-A. In the said letter, petitioner also mentioned that the Managing Director of the Company had called on the Chief Engineer, Electricity, (General) on 8-12-1979 for a discussion about the rate to be fixed for a further period of 5 years on terms similar to those of the other two undertakings and at the said Meeting the Chief Engineer, Electrical, (General) held out an assurance that further communication regarding execution of the Agreement may be awaited by the petitioner. In the same letter, the petitioner requested the Board to arrange for execution of the Agreement incorporating the special tariff to be charged on 1-1-1980 on par with the rate stipulated for VISL and SMIORE, No reply was received from the Board and the petitioner persisted with another letter dated 4-11-1980 addressed to the Chairman of the Board drawing his attention to the Agreement to be executed

and complaining that the rates that were being charged in the meanwhile from 1-1-1980 were very much higher than what would have been paid had the Special Agreement been executed and that the payments were being made by the petitioner under protest. Again, since there was no response from the Board, the Officers of the petitioner-Company called on the Chairman and the Chief Engineer, Electricity, (General) at their respective offices several times in regard to execution of the long term Agreement. Thereafter the petitioner addressed a letter dated 6-7-1981 to the second respondent and brought to its notice Annexure-A and claimed that it was entitled to supply of electrical energy at special tariff on par with the tariff charged to the other two undertakings. At this juncture intruded an amendment to the provisions of the Electricity (Supply) (Karnataka Amendment) Act, 1981, Act No. 33 of 1981, coming into force on 21-11-1980 setting at nought all Special Agreements including those of the other two undertakings thereby eliminating preferential treatment and restoring an uniform tariff to all consumers of high tension energy to which either the petitioner or the other two industrial undertakings were no exceptions.

4. In response to letter dated 6-7-1981, the State of Karnataka (Respondent-2 herein) sent a reply dated 9-9-1981 informing that with the enforcement of the amendment to the Act, all HT consumers who were getting certain preferential treatment under the Special Agreements are now covered under the uniform tariff rate and that since no Special Agreement had been entered into with the petitioner-Company by the Board from 1-1-1980 to 21-11-1980, the question of allowing the rates as agreed to under the Agreements originally executed during 1979 would not arise.

5. The Officers of the petitioner-Company including its Managing Director met in vain the Chairman of the Board and its other officers on several occasions. It is stated that the petitioner was assured by the Officers of the Board that in view of Resolution No. 13179 dated 24-11-1979, the contract to be entered into with the petitioner-Company was only a formality and that the petitioner could arrange its finances and price its products in anticipation of the special tariff. It is claimed that being prompted by and acting on the faith of the assurances contained in the Resolution of the Board, petitioner entered into several business commitments with its customers for the supply of its products, it is also stated that the petitioner depends entirely on electrical energy for managing its activity and the Board being the sole supplier of power, the petitioner made constant efforts to have the dispute resolved by persuasive methods, but in vain. The petitioner has also made a grievance of the adverse consequences brought about by an amendment of the Act depriving the petitioner and similarly situate persons of the benefit of special tariff and has pointed out that the Sandur Manganese and Iron Ores Limited brought an action challenging the constitutional validity of the amendment in Writ Petition No. 34410 of 1981 before this Court. At the time of filing of this Writ Petition, the said Writ Petition was pending before the Court. But it is now informed that it has been dismissed on merits. Similar Writ Petitions had been filed by several industrial undertakings

in this regard and the fate of those Writ Petitions would not have been different.

6. It is stated that the petitioner was optimistic that the Board would abide by its own Resolution dated 28-3-1980 and would fix a special tariff for the petitioner at the rate of 13.47 ps. per unit for supply of electrical energy between 1-1-1980 and 21-11-1980. It is also stated that the petitioner did not receive any communication from the Board either refusing or repudiating the request of the petitioner for supply of power in accordance with its own resolution dated 28-3-1980. It is only in this circumstance that the petitioner addressed a letter dated 21-1-1983 to the Board demanding refund of excess amount paid under protest for the period between 1-1-1980 and 21-11-1980. The Board in its reply dated 2-3-1983 for the first time declined to accede to the demand of the petitioner. This prompted the petitioner to file this Writ Petition.

7. The petitioner has sought for a direction to the Board to charge the petitioner-Company at the rate of 13.47 ps. per KWH for supply of electrical energy between 1-1-1980 and 21-11-1980 and also for refund of the excess amount already received from the petitioner together with a reasonable rate of interest.

8. On behalf of the petitioner, it is contended that the Board having acted upon the Government Order dated 26-9-1979 by passing a Resolution to supply electrical energy to the petitioner at 12.71 ps. for a period of 92 days between 1-10-1979 and 31-12-1979 and having entered into an Agreement thereunder, is under a statutory obligation to supply power for the period between 1-1-1980 and 21-11-1980 on the same principle and basis without any discrimination in the matter of application of a special power tariff between the petitioner on the one hand and the other two industrial undertakings on the other.

9. The second contention is that the Board is under an obligation to implement its own resolution on the faith of which the petitioner has acted upon to its detriment by arranging its finances and pricing its manufactured products with the purchasers and entering into business commitments, it is contended that the petitioner entertained a legitimate expectation that the Board would concede the benefit of the same special tariff as would be applicable to the petitioner vis-a-vis VISL and SMIOR particularly in view of Annexure-A and subsequent implementation of the same for certain periods. According to the learned Counsel for the petitioner, the Board is under a statutory obligation to charge only 13.47 ps. per KWH for energy supplied to the petitioner between 1-1-1980 and 21-11-1980.

10. Another contention is that the amendment which came into force, referred to earlier, has no retrospective operation or application in regard to the supply of energy made anterior to the commencement of the amendment and the position remains unaffected as between the petitioner and the Board for the period between 1-1-1980 and 21-11-1980 the rate chargeable being 13.47 ps. per KWH in accordance with the Resolution passed by the Board at its meeting on 28-3-1980 and that the Board is estopped from charging more than the rate.

Therefore, it is submitted that the impugned action of the Board in charging HT-1A Tariff Schedule of 1978 with applicable surcharge from 1-1-1980 to 21-11-1980 for supply of power to the petitioner, is illegal, arbitrary and devoid of the authority of law.

11. On behalf of the Karnataka Electricity Board, the learned Standing Counsel has filed a detailed statement of objections. The substance of the objections filed by the Board is that in respect of the petitioner a Special Agreement was entered into in December, 1979 only for a period of 92 days with effect from 1-10-1979 to 31-12-1979 and thereafter the Board took up the matter for examination for a period subsequent to 1-1-1980. In this regard, the Board referred the question to the Government by its letter dated 21-4-1980 for the concurrence of the State Government and subsequently the matter could not be finalised either by the Government or by the Board with the advent of the ordinance preceding the amendment under Amendment Act 33/1981, amending Section 49 of the Electricity (Supply) Act of 1948 which was promulgated with effect from 21-11-1980 for repealing all special tariffs, thereby giving a quietus to preferential treatment. The amendment brought about uniformity in the application of tariff in respect of all HT consumers receiving supply of energy from the Board. The learned Counsel tried to impress on the Court that the Government was bent upon removing the preferential treatment to a particular class of industry, as a matter of policy and, therefore, as a policy matter, action could not have been taken in favour of the petitioner. It was also submitted that without the concurrence of the State Government the Board could not have entered into a Special Agreement with the petitioner. In this regard, I consider it necessary to reproduce an excerpt of the statement of objections filed by the Board:-

"By this amendment all Special Agreements that were entered into earlier have all been annulled and all the H.T. consumers who were getting certain preferential treatment under Special Agreements were covered under Uniform Tariff rate. It was obvious that the Government who were bent upon removing the preferential treatment to a particular class of industry, as a policy matter could not have taken any action in the case of the petitioner. In the absence of the concurrence of the Government, this respondent could not have entered into a special agreement with the petitioner. Since there was no agreement covering the case of the petitioner to pay any Special rates, the petitioner was bound to pay at the then existing tariff rates from 1-1-1980 to 20-11-1980 after the expiry of the period of the Special Agreement which was valid only upto 31-12-1979 which was subsequently annulled by the Ordinance of the Amending Act No. 33. In fact the Board could not have entered into any such Special Agreement in view of the prohibition contained in the Amending Act."

It is also submitted that since the petitioner is covered by the general tariff, in the absence of a Special Agreement for payment of special tariff, the petitioner is estopped from claiming refund of the alleged excess amount paid because the

rate at which payment is made is in conformity with the general tariff. It is also urged that the claim of the petitioner is barred by time.

12. The Board has denied that the petitioner was assured by the Officers of the Board that an Agreement would be entered into for a period of 5 years inspite of the Amending Act. It is categorically stated that no such assurance was given or could have been given without the concurrence of the State Government, particularly in the light of the prohibition imposed by the Amendment, and that the Resolution of the Board passed on 28-3-1980 does not come to the rescue of the petitioner. It is stated that the Resolution was only intended for the purpose of sending recommendation to the Government for concurrence and it was not meant for implementation. The sentences used in this regard in the statement of objections, to be precise, are as follows:-

"The Resolution dated 28-3-1980 of the Board referred to by the petitioner does not help them in any manner. It was only meant to send it to Government for concurrence and not meant for any implementation. No special agreement could have been entered into without the concurrence of the Government. The petitioner had no vested right in this matter and they are not entitled to any relief without entering into a valid agreement with this respondent."

The Board has also filed additional statement of objections out of which the following material particulars arise.

13. It is stated that the Government examined the case of the petitioner and directed the Board to enter into a Special Agreement with the petitioner from 1-10-1979 to 30-12-1979 for a period of 92 days only for supply of electrical energy at the rate of 12.07 ps. per KWH plus duty etc. and also authorised the Board to negotiate the rates and conditions with effect from 1-1-1980, All that the Board did was that it entered into an Agreement only for a period of 92 days as far as the period subsequent to 1-1-1980 is concerned, the Board wrote to the State Government for its concurrence, on 21-4-1980 under Annexure R-1. It was emphasised by the Board in the said letter that the Board would be losing to the extent of Rs. 91,444/- per month if the concession claimed by the petitioner is to be allowed and in the event of concurrence being given by the State Government, the State Government will have to reimburse the Board from time to time to offset the loss. However, the Government did not concur and directed the Board to defer the subject and to continue to charge in accordance with the general tariff. Annexures-R-2 and R-3 are relied upon in this context by the Board. It is reiterated that the Ordinance was succeeded by an amendment to Section 49 of the Act, the legislative intent being to wipe out preferential treatment and to restore uniformity in respect of all HT consumers without any exception and that the matter of extending concession is purely in the realm of administrative discretion. Emphasis is laid on the point that the Government did in fact, feel that such a discriminatory treatment or special treatment was not reasonable and hence the move for amendment was made and the defect was rectified and, therefore, it is submitted that there is no violation of Article 14 of

the Constitution. it is further contended that no right has accrued in favour of the petitioner since no Special Agreement came to be executed at all and that a mere resolution for seeking of concurrence of the State Government in this regard would not create any right in favour of the petitioner.

14. The Board also justifies the concession extended to Sandur Mines by entering into a Supplemental Agreement and contends that such a Supplemental Agreement does not create any right in favour of the petitioner, particularly in view of the fact that the original Agreement with Sandur Mines was for a duration of 12 years at a stipulated rate since 1972 and that the rates were revised upwardly by mutual consent from time to time by means of Supplemental Agreement. Copies of the Agreements entered into with Sandur Mines are Annexures-R-4, R-4(a) and R-4(b). Therefore, the Board urges the dismissal of the Writ Petition.

15. The learned Government Pleader appearing on behalf of the State submitted in turn that the stand taken by the Board that no commitment or assurance was made or held out to the petitioner at any time to extend a special tariff was well founded in the case of Sandur Mines or VISL. It is categorically contended on behalf of the State that whatever commitment was made with the petitioner was only for a period of 92 days under a special agreement and not beyond and, therefore, there is no basis for the expectation of the petitioner that similar special tariff would be conceded. It was contended that the principle of estoppel has no application to the facts and circumstances of this case. It is also contended that the real impediment comes from amendment to Section 49 of the Act and earlier to that, the Board had no power at all to continue the rate at 13.47 ps. per unit, unless the Government consented to the same. Since the Government had not granted its concurrence and also since the amendment had come into force, the petitioner became liable to pay the existing tariff under the uniform rate for the period between 1-1-1980 and 21-11-1980 since the rate pertaining prior to 1-10-1979 was to be applied beyond the period of all the Special Agreements which were valid upto 31-12-1979 and since special tariff would not be applicable to the petitioner, the Board was right in applying the uniform rate with effect from 1-1-1980.

16. The point for consideration is whether for the period between 1-1-1980 and 21-11-1980, the Board should have charged the petitioner-Company only at the rate of Rs. 13.47 ps. per KWH for the electricity supplied to it and whether the petitioner is entitled to refund of the alleged excess amount collected from the petitioner by the Board together with interest at a reasonable rate.

17. Since the case of the petitioner is based on the proceedings of the Government of Karnataka leading to the order passed on 26-9-1979 in Order No. PWD 110 KEB 78, Bangalore, the order deserves to be examined. This is how the order reads:-

"The Karnataka Electricity Board is hereby authorised to enter into a special

agreement with M/s. Dandeli Ferro Alloys Private Ltd. from 1-10-1979 till 30-12-1979 for the supply of electrical energy at the rate of 12.71 paise per KWH plus applicable electricity duty and excise duty, subject to a monthly minimum charge calculated in accordance with the provisions therefore contained in the special agreements already in force with M/s. Visveswaraya Iron and Steel Ltd. and M/s. Sandur Manganese and Iron Ore Ltd., adopting the rate of 18.71 paise per KWH. Karnataka Electricity Board in further authorised to negotiate rates and conditions, to be made applicable from 1-1-1980 in line with the aforesaid special agreements.

By Order and in the name of the Government of Karnataka, Sd/- Deputy Secretary to Government, Public Works & Electricity Board, Bangalore."

This order which was passed by the State Government after due consideration of the representation made by the Company apparently on the face of the record authorises the Karnataka Electricity Board to act in a particular manner. It can also be said that the authorisation granted by the Government under this order is two-fold. The first authorisation perceptible in the order is that the Board is empowered to enter into a Special Agreement with the petitioner-Company with effect from 1-10-1979 till 30-12-1979, to wit, supply of electrical energy to the petitioner at the rate of 12.71 ps. per KWH together with applicable electricity duty and excess duty subject to payment of a monthly minimum charge which has to be calculated in accordance with the provisions of clauses contained in the Special Agreements already in force with VISL and SMIORE by adopting the rate of 12.71 ps. per KWH. This authorisation reflects the specifics regarding the duration of the Agreement, the rate at which the energy is to be supplied, the other incidental duties payable, the monthly minimum charge payable and the norm to be adopted for fixing the rate at 12.07 ps per KWH., the norm being the rate adopted in the case of VISL and SMIORE under Special Agreements entered into between the Electricity Board and the said industrial undertakings. The second authorisation is in regard to the Board being empowered to negotiate rates and conditions to be made applicable with effect from 1-1-1980 with the petitioner-Company in line with the Special Agreements executed between the Board and the other two undertakings. It is no doubt true that the expression used by the State Government is not indicative of a direction or a command but is in the nature of an authorisation. Authorisation can be granted only where the power to authorise resides in the State Government either in accordance with the relevant provisions of the Act or in accordance with an executive policy, in the absence of a statute covering the field. It is not difficult to locate and identify the power of the Board as well as the power of the State in this regard. Section 49 of the Electricity Supply Act, 1948 prior to the amendment which came into force with effect from 21-11-1980 reads thus:

"49(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 conditions for the supply of electricity, the Board shall not show undue preference to any person."

18. It could be seen from the provisions of Section 49 that power is reserved to the Board for supply of electricity to any person not being a licensee on such terms and conditions as the Board thinks fit and may for the purpose of such supply, frame uniform tariffs. Sub-section (3) of Section 49 is an exception to what is contemplated under Sub-section (1) of Section 49. According to it, the Board is empowered if it considers it necessary or expedient, to fix different tariffs for the supply of electricity to any person not being a licensee having due regard to factors such as geographic position of any area, nature of the supply and purpose for which the supply is required and any other relevant factor.

19. It is thus seen that in the legal sense, authorisation made by the State Government under Annexure-A would lose its significance in view of the statutory power invested with the Board u/s 49(3) of the Act. The ordinary meaning of the word "authorisation" in the context would not be applicable while construing the provisions of Sub-section (3) of Section 49.

20. According to Section 78A of the Act, it is provided:

"(1) 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.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final."

21. The construction of Section 78A in the proper perspective would reveal that the Board is guided by such directions on questions of policy which may be issued from time to time by the State Government during the course of the discharge of Its functions by the Board.

22. Notwithstanding Section 49(3) of the Act, it is possible to hold in the light of the provisions of Section 78A of the Act that the State Government is statutorily empowered to issue instructions to the Board in the discharge of its functions so long as the instructions, to be more precise, directions are on questions of policy, as may be given by the State Government to the Board. In other words, the State Government enjoys the supreme power of issuing directions to the Board on questions of policy as may be determined by the State Government in the discharge of functions by the Board. It is mandated u/s 78A(1) that such directions are binding on the Board and this is an inference to be reached by the words used in Section 78A(1) and the words are:-

"The Board shall be guided by such directions on questions of policy as may be given to it by the State Government."

23. According to Section 78A(2) of the Act, should there be any dispute between the Board and the State Government as to whether a question is or is not a question of policy it shall be referred to the Authority whose decision thereon shall be final. The word "Authority" is defined u/s 2(1) of the Act. By the word "Authority" is meant the Central Electricity Authority stated u/s 3 of the Act.

24. It is in the above context that it is necessary to examine the import of the word "authorised" used in the Government Order dated 26-9-1979 under Annexure-A. The discussion in the proceedings of the Government of Karnataka from paras 1 to 3 supply the basis for issue of the Government Order. The State Government has referred to the application of the petitioner and has referred to the cases of the other two industrial undertakings, the grant of special tariff under Special Agreements to the other industrial undertakings and having duly considered the case of the petitioner, have issued the order dated 26-9-1979. In this context it would not be unreasonable to presume that what is described as authorisation in the Government Order dated 26-9-1979 has to be construed as a direction traceable to exercise of power u/s 78A of the Act. The presumption is fortified by the fact that grant of special tariff definitely falls within the compass of policy decision. The application of uniform tariff to the HT consumers in general under the Act is a statutory compulsion. The relaxation of such a statutory rigour and extension of preferential treatment to certain persons falling within a specified class or classification by lowering the uniform tariff, partakes the character of a policy decision only and, therefore, it is my opinion that the Government Order dated 26-9-1979 though couched in a cabbalistic language as to give a meaning that it is only an authorisation is, in fact, a direction to the Board. It is no doubt true that the provision under which the Government has issued this direction is not forthcoming from the Government Order. Neither of the learned Counsel appearing for the parties has been able to lay hand on any provision in the Act which empowers the State Government to give such an authorisation to the Board as is discernible in the Government Order dated 26-9-1979 nor do I find any such provision in the Act except Section 78A, which invests the power of giving a direction to the Board by the State Government on a question of policy. Therefore, it would not be unreasonable to presume that notwithstanding the absence of reference to any particular provision of the statute in the order under Annexure-A, the inevitable conclusion is that the power that is exercised by the State Government in issuing the said order is located in Section 78A(1) of the Act.

25. Now if the Government Order dated 26-9-1979 is to be treated as a direction issued by the State Government to the Board, the necessary implication is that the decision has already been taken by the State Government and it has been communicated to the Board and what remains for the Board is only the implementation of the direction issued by the State Government under Annexure-A. As regards the first authorisation which I deem as a direction issued by the State Government to the Board, there is a commitment on the part of the Board for the period between 1-10-1979 to 30-12-1979 for supply of electrical energy

to the petitioner-Company at the rate of 12.71 ps. per KWH plus applicable electricity duty and excess duty subject to the monthly minimum charge prescribed therein. But as regards the second authorisation which is also in the nature of a direction, the Karnataka Electricity Board was directed to negotiate rates and conditions to be made applicable from 1-1-1980 with the petitioner-Company in view of the special agreements which had already been entered into with M/s. VISL and M/s. SMIORE at the rate of Rs. 12.71 ps. per KWH. The direction issued has to be treated as a mandate emerging from a decision taken by the State Government. In other words, the two directions which are explicit in the order dated 26-9-1979 under Annexure-A are the results of a decision taken by" the State Government as a decision making authority on policy. Policy making power in this regard has to be accorded the recognition of the residuary power inherent in the discharge of executive or administrative function. We are not concerned with the correctness or propriety of either the policy making process or the fall-out of the policy decision taken by the State Government leading to the directions which are to be found in Annexure-A. The only point for consideration is whether these directions have been complied with by the Board.

26. If the Board did not see eye to eye with the decision taken by the State Government and the directions issued thereunder, it was open to the Board to raise a dispute and have it referred to the prescribed authority as contemplated u/s 78A(2) of the Act. No such dispute was raised by the Board in this regard and therefore in the absence of demur, it is incumbent upon the Board to faithfully implement the directions issued by the State Government in this regard. The petitioner is seeking the application of the tariff rate at 12.71 ps. per KWH for a period which does not extend beyond the date of commencement of the amendment to Section 49 of the Act. The period for which the petitioner is seeking the application of special tariff is for the period 1-1-1980 to 21-11-1980. Since the amendment to Section 49 of the Act came into force on 21-11-1980, the question of applying again the tariff for a period subsequent to the amendment would not arise. As submitted by the learned Counsel appearing for the Board since prior to the coming into force of the Amendment Act, an ordinance was in force, no relief could be granted for that period since the ordinance abrogated grant of special tariff to certain class of HT consumers. These statements have relevance only in regard to the application of special tariff for energy supplied to the petitioner-Company from 1-1-1980 onwards. The petitioner-Company, as a result, could only be entitled to the special tariff rates for the period commencing from 1-1-1980 upto 21-11-1980.

27. The question whether the principle of legitimate expectation and the principle of promissory estoppel would be attracted to the facts of the case assume no significance at all in view of the fact that i have reached the finding that a direction has been issued by the State Government u/s 78A(1) of the Act and that the direction is binding on the Board. Similarly, the question of considering the effect of a Supplemental Agreement entered into between the Sandur Mines and the Board gets relegated to the background. I do not think that it is

necessary for me to traverse these aspects, in the facts and circumstances of the case since I have formulated my opinion on the basis of Annexure-A considered in the light of the relevant statutory provisions that the Board has no choice in the matter and it has to implement the directions issued by the State Government under Annexure-A.

28. It is too late in the day for the State Government to back out of its commitment having issued the order under Annexure-A. In this limited context only, it is possible for me to hold that the petitioner was justified in entertaining a legitimate expectation that not only the Board but also the State would honour their commitment and assurance held out to the petitioner.

29. In this context, the principle laid down in REGINA V. LIVERPOOL CORPORATION, EX PARTE LIVERPOOL TAXI FLEET OPERATORS' ASSOCIATION AND ANR. 1972 (2) QBD 308 is of relevance. It was held in this case that even in the absence of detrimental reliance, the public interest requires the undertaking to be honoured unless substantiated by strong countervailing public policy consideration. Parker, L.J., went to the extent of observing that an industrial policy can only be adopted vis-a-vis a recipient of the latter, after considering where an overriding public interest requires it.

30. Dunn, L.J., adopting a different analysis observed that the circular effectively defined the ambit of relevant considerations which the Home Secretary could consider, so that by taking into account any additional factors, he was taking into account irrelevant factors and therefore the Home Secretary had acted unfairly.

31. The recent trend is that public body should tread carefully while policy laying. On the one hand, they must not treat themselves as bound by policy guidelines, on the other, they must not readily depart from such guidelines. They have every right and obligation to exercise their powers in public interest. But an important element in such exercise of power is to determine whether the public interest is involved or not, which is a question of fact. It is thus to be seen that Courts have adopted principles which enable them to balance consideration of fairness with wider aspects and public interest

32. I am unable to discover in the absence of material on record, that by implementing the policy decision of the State countervailing public interest would suffer. On the other hand, I am convinced that in the facts and circumstances of this case, both the State and the Board ought to honour their commitment which stems from the order issued under Annexure-A.

33. Again I am tempted to quote Lindley M.R. in 1899, ROBERTS V. GWYRFAL DISTRICT (1899) 2 Ch 608 Council:

"I know of no duty of the Court which it is more Important to observe and no power of the Court which it is more important to enforce than its power of keeping public bodies within their rights. The moment public bodies exceed their rights, they do so to the injury and oppression of private individuals, and those

persons are entitled to be protected from injury arising from such operations of public bodies."

34. Looking from any angle, it is not possible to accept the contention of the learned Counsel appearing for the Board and the State that the Writ Petition is either misconceived or not supported by enforceable rights.

35. For the reasons stated above, the Writ Petition is allowed and the Rule is made absolute. The Karnataka Electricity Board (respondent-1 herein) is directed to charge the petitioner-Company at the rate of 13.47 ps. per KWH which is inclusive of all the duties, in respect of electrical energy supplied between 1-1-1980 and 21-11-1980.

36. If any excess amount has already been paid by the petitioner or collected by the first respondent, the same shall be adjusted towards the liabilities of the petitioner in regard to further energy consumed after 21-11-1980 or the same may be adjusted towards any arrears which the petitioner owes to the first respondent.

37. Since the interest sought by the petitioner does not relate to either liquidated or unliquidated damages, I am not inclined to award interest to the petitioner. Accordingly, the Writ Petition is disposed of.