

(1987) 05 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition No's. 1926 to 1938 of 1986 and 541, 641 and 313 of 1987

D.C.M. Limited

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 07-05-1987

Acts Referred:

Arbitration Act, 1940 — Section 20
Constitution of India, 1950 — Article 14
Delhi Municipal Corporation Act, 1957 — Section 206, 274, 275, 276, 277
Electricity (Supply) Act, 1948 — Section 49, 59
Electricity Rules, 1956 — Rule 26, 26(3)

Citation : AIR 1989 Delhi 30

Hon'ble Judges : S.S. Chadha, J; S.N. Sapra, J

Bench : Division Bench

Advocate : M.C. Bhandare and M.R. Chawla, for the Appellant; V.P. Singh and Anil Amrit, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Chadha, J.—The petitioners in this batch of writ petitions have assailed certain provisions of the electricity Tariff issued from time to time by the Municipal Corporation of Delhi as discriminatory and have questioned the computation of the rate of fuel adjustment charges on the basis of actual cost of fuel used.

2. The Municipal Corporation of Delhi is a body corporate established u/s 3 of the Delhi Municipal Corporation Act, 1957 (hereinafter called "the Act") and is charged with the Municipal Government of Delhi under its statutory provisions. u/s 42 of the Act, one of the obligatory functions of the Municipal Corporation of Delhi (for short, called the "Corporation") is the construction or purchase, maintenance, extension, management and conduct of any undertaking for the generation or supply and distribution of electricity to the public. For the efficient performance of its functions, a number of municipal authorities under the

Corporation are constituted including the Delhi Electric Supply Committee (for short called the D.E.S.C.). The D.E.S.C. is responsible for the conduct and management of the Delhi Electric Supply Undertaking (for short called DESU) and for the efficient discharge of such responsibility is to exercise such powers and perform such functions as are conferred or imposed by or under the Act. The provisions relating to the electric supply are contained in Chap. XIII, Sections 274 to 286 of the Act. In addition to the provisions of the Act, the provisions of the Indian Electricity Act, 1910, the Indian Electricity Rules, 1956 framed thereunder and the Electric (Supply) Act, 1948 are relevant. Section 275 lays down the duty of the D.E.S.C. to develop and maintain an efficient, coordinated and economical system of electric supply for the whole of the Union Territory of Delhi and for that purpose to take a number of specified steps from time to time. In the discharge of its functions in relation to electric supply, the D.E.S.C., inter alia, is to promote the use of all economical methods of generating, transmitting and distributing electricity. By virtue of Section 277, the Corporation is to have all the powers and obligations of a licensee under the Indian Electricity Act, 1910. According to Sub-section (2) of Section 278 the General Manager (Electricity) is authorised on behalf of the Corporation to exercise all powers and be subject to all the obligations of a licensee under the Indian Electricity Act, 1910 or any other law for the time being in force relating to the generation or supply of electricity. Section 281 contains the powers of the Corporation to make arrangements with licensees and for that purpose enter into agreements with them without showing any undue preference to any licensee. Section 283 makes provisions for the charges for the supply of electricity and reads as under:

Subject to the provisions of any law for the time being in force, charges shall be leviable for the supply of electricity by the Corporation at such rates as may, from time to time, be fixed by the Delhi Electric Supply Committee with the approval of the Corporation.

In Exercise of the powers conferred by Section 283 of the Act, charges for supply of electricity, called electricity Tariff, are fixed from time to time almost yearly. The Tariff, divides the consumers for the purposes of charging them in different categories like domestic, non-domestic, industrial load, agriculture, street lighting, night load tariff, railway traction, temporary supply etc. It also includes general conditions of application, one of which is that the supply of electricity in all cases is subject to the execution of agreements including compliance of commercial formalities by the consumers. The industrial consumers are further sub-divided into small industrial power consumers and large industrial power consumers. We are concerned in these cases with the bulk consumers called Large Industrial Power (LIP) consumers.

3. On February 15, 1982, the Commissioner of the Corporation (while exercising the powers of the Delhi Electric Supply Committee/Standing Committee/Corporation) fixed and approved the charges for the supply of electricity, i.e. the Tariff for the year 1982-83.

4. M/s. D.C.M. Ltd. had earlier entered into an agreement on September 26, 1972 with DESU for the supply of electrical energy as a registered consumer of large Industrial Power connection No. X1-01-90000301. Identical agreements have been entered into by other L.I.P. consumers in the other writ petitions before us. Clause 15(a) of the said agreement reads as under:

15(a). The Consumer shall pay each month to the undertaking for electrical energy, supplied during the preceding month such amount as shall be calculated and ascertained in accordance with the Rate Schedule LIP attached hereto. The rates contained in the schedule are those in force at the time of executing this agreement. The Consumer shall be eligible for whatever reduction or rebate as may be granted on the rates and shall be liable to pay for whatever surcharge or increase in those rates as may be from time to time be levied for made by the Undertaking. Any other method of charging decided by the Undertaking shall also be applicable.

5. The Tariff provides for the payment of energy charges which are payable by all consumers at the rates specified therein. The LIP consumers have to pay demand charges plus energy charges. The demand charges depend upon the quantum of the electricity consumed as also the energy charges. However, the energy charges are adjustable according to the formula laid down in the Tariff. It is more commonly known as the fuel adjustment charges. The energy charges are based on the basic average fuel and purchase cost of 15.25 paise per KWH which is liable to variation. The cost of the energy per KWH sold is the quotient computed on dividing the sum of the "actual cost of the fuel used" and "the actual cost of energy purchased". The increase or decrease in the cost per KWH sold is the difference between the quotient computed and basic average of 15.25 paise per KWH. The formula also provides for final adjustment on account of variation in the energy charges as soon as possible after the close of period of account. It also authorises DESU to make adjustments as may be provisionally fixed by them from time to time.

6. Certain disputes arose between the petitioners and DESU regarding payment of increased fuel adjustment charges. The main dispute was that the basic average fuel and purchase cost in fuel adjustment clause would mean only the invoice price of coal as fuel and will not include any related expenses. As the agreements contained an arbitration clause, petitions u/s 20 of the Arbitration Act, 1940 were filed in this Court praying for filing of the arbitration agreements and for reference of the disputes. B. N. Kirpal J. allowed the petitions and directed that the arbitration agreement be filed in Court and the following dispute was referred to the arbitration:

Whether the fuel adjustment charges have been fixed and are being demanded by respondent No. 2 from time to time in accordance with the tariff for the year in question?

This reference was felt as comprehensive enough to include all questions which

could be raised before the arbitrator, including the question as to whether the provisional revision of such charges can be made, from time to time, with retrospective effect. Shri S.N. Andley, a retired Chief Justice of this Court was appointed as the sole arbitrator. He entered upon the reference and made and published his award on September 24, 1985. The learned arbitrator noticed that the real dispute between the parties arose because the energy charges are subject to adjustment according to the formula set out in the Tariff. In his reasoned award, he held that provisional adjustment can be retrospective. He next dealt with the question about the adjustment of energy charges. He felt that for this purpose, it is necessary to determine (i) the actual cost of fuel used; (ii) the actual cost of energy purchased; and (iii) the energy sold. He understood the scope of the reference as to what is to be determined is as to whether in arriving at the actual cost of fuel irrelevant factors have been taken into consideration. He referred to the statement which had given the average rate for coal cost for the year 1981-82 which comprises of 10 items, for ascertaining the actual cost of fuel used. We are concerned only with one of the component, namely, "demurrage charges". According to the DESU, the demurrage charges accrue because of various factors and shortly stated the circumstances are the time taken for unloading of wagons and clearing of the tracks which, according to DESU, are unavoidable. This contention did not find favour with the learned arbitrator. He held that the "demurrage charges" incurred by DESU are not relevant for determining the actual cost of fuel for the purpose of adjustment formula. The learned arbitrator also dealt with "transmission and distribution losses" shown as an item in the statement showing the fuel and purchase surcharge during the years 1977-78 to 1982-83. He held in a reasoned award that "transmission and distribution losses" cannot be a separate item of charge under the adjustment formula and is not a relevant charge.

7. The award was filed in this Court and registered as Suit No. 1862-A/85 in M/s. D.C.M. Limited's case. Objections for setting aside the award were filed and tried D. P. Wadhwa, J. in the judgment dated January 16, 1986 held that no specific question of law was referred to the arbitrator as such, though it might be said that questions of law were referred generally as applicable to certain admitted facts, even though involving interpretation/construction of the adjustment formula. The learned Judge noticed while dealing with other issues that the energy charges were based on the basic average fuel and purchase cost of 15.25 paise per KWH and the components/items which went into the computation of the figure of 15.25 paise were the very basis of the reference and the arbitrator was only required to adjudicate in effect, if any other item was also taken into account for the subsequent years to arrive at the cost of fuel and if that particular item was relevant or not. He upheld the contention that the arbitrator went beyond the terms of reference when the arbitrator in effect went into the ten items comprised in computing the cost of fuel for the year 1977-78, which the Court had said could not be challenged. On the question of "transmission and distribution of losses", the learned Judge referred to the issue formulated by the

arbitrator as to whether "transmission and distribution losses" can be included while computing the actual cost of fuel used and/or actual cost of energy purchased. The learned Judge opined that to work out the formula, three figures are relevant, namely, (1) cost of fuel; (2) cost of energy purchased; and (3) number of units sold, and the figures of No. (1) plus No. 2 are to be divided by figure of No. 3 and that "transmission and distribution losses" are, therefore, not a separate item of charge under the adjustment formula. The award on the question of "demurrage charges" and "transmission and distribution losses" was set aside in so far as it held that these two items could not be taken into consideration, in working out the adjustment formula. The award, as modified, was made a rule of the Court and a decree, in terms thereof was passed.

8. The batch of first appeals arising out of the judgment of D.P. Wadhwa J. were heard and determined by us. We held the view that a specific legal issue was referred to the effect whether the computation of the fuel surcharge was in accordance with the formula as applied to the facts disclosed by the respondents and thus it is not open to the Court to go into the correctness of the finding of fact or of law by the arbitrator. Whether a particular item/component/element in actual cost of fuel used is relevant or not is itself a question of law and involves the construction of the Tariff. We held that the question before the arbitrator was as to the construction of the clause of Tariff as to the actual cost of the fuel used. The arbitrator was called upon to consider whether in ascertaining the actual cost of fuel used, irrelevant or extraneous considerations had gone into. The factors which had gone into in arriving at the actual cost of fuel used were before the arbitrator. He determined the question of relevancy of those elements in Computing the actual cost of the fuel used. The petitioners contended that demurrage was levied on the DESU because of their negligence on laches in not lifting the coal stock in time and the consumers could not be saddled with this charge as that is not the actual cost of fuel. The contention was also that the consumers could not be penalised or burdened for the inefficiency or incompetency of the DESU and no premium could be put on it. The various factors enumerated in para 10 of the affidavit as to the time taken for unloading of the wagons and clearing of the tracks which according to DESU is unavoidable was also taken into consideration. The arbitrator came to a conclusion and drew his inferences that this element of demurrage incurred by DESU was not relevant for considering actual cost of fuel for working out the adjustment formula We hold a different view but we are not entitled in law to substitute our view for the view of the arbitrator, for his decision on the question is final and binding on the parties. However, we found that the consideration of "transmission and distribution losses" was outside the scope of reference and by indirect method could not be brought into the Tariff in place of the units sold.

9. The old Tariff was revised w.e.f. 9th April, 1985 and then from 1st April, 1986 which provided for a basic fuel adjustment charge of 53.35 paise per KWH. It is apposite to reproduce the revised Tariff for the year 1985-86 relating to LIP consumers:

Large Industrial Power (L.I.P.)

(a) Availability:

Available as primary power to Large Industrial Consumers having connected load above 100 K.W.

(b) Character of Service:

A.C. 50 cycles, 3 phase, 11 K.V.

(c) Tariff:

Demand Charges:

First 1000 KVA of billing demand for the month Rs. 40.00 per KVA or part thereof

All the above 1000 KVA of billing demand for the month

Plus: Rs. 28-00 per KVA or part thereof

Energy Charges:

First 5,00,000 units per month at 85 paise per unit. All above 5,00,000 units per month at 84 paise per unit.

subject to:

a maximum overall rate of Rs. 1.10 per KWH without prejudice to the minimum payment as laid down in item (g) below and adjustment clause at (xvii) above under General Conditions of Application.

Clause (xvii) of the General Conditions of Application reads as under:

(xvii) The tariff, for the large industrial power consumers and Railway Traction will be subject to adjustment as under:

(a) The energy charges specified in this schedule are based on the average fuel and purchase cost of 53.35 paise per KWH;

(b) The actual cost of fuel used during any period shall be the amount in rupees of the cost of all types of fuel burnt in the Undertaking's generating plants (including gas turbines) in that period;

(c) The actual cost of energy purchase shall be the amount paid in rupees for import of energy for that period;

(d) The fuel and purchase cost of energy per KWH sold shall be the quotient computed on dividing the sum of (b) and (c) by the KWH sold during that period;

(e) The increase or decrease in fuel and purchase cost of per KWH sold shall be the difference of (d) and (a) above and accordingly shall be added or subtracted to the energy charges.

Final adjustment on account of variation in energy charges will be made as soon

as possible after the close of the period of account but adjustment as may be provisionally fixed by the D.E.S.U. Management from time to time will be incorporated as a part of the monthly bill and shall be payable by the consumer. Such provisional rates as and when finalised shall have retrospective effect from the beginning of that financial year.

10. The petitioners had prayed in the writ petition to declare Section 283 of the Act as ultra vires of the Constitution on the ground of excessive delegation and secondly to strike down the provisions of the Tariff which authorise the respondents to increase the rates from time to time. In fairness to Mr. M. C. Bhandare, Senior Advocate, this challenge was given up at the hearing. The relief now claimed is for a direction to the respondents not to include the "demurrage charges" as also "transmission and distribution losses" allegedly suffered by them in the production, purchase and distribution of electricity while computing the rate of fuel adjustment charges. A further relief claimed is for a direction to the respondents to raise only one final bill as per the provisions of the Tariff and that too within the next financial year or in any case within three years failing which the recovery should be held as barred by limitation.

11. These petitions were filed during the pendency of the first appeals (F.A.O. (OS) No. 56/86 and others) in this Court but they raise distinct questions other than those raised in the arbitration proceedings. The two batches of the cases were, however, heard together.

12. The main submission of Mr. M.C. Bhandare, Senior Advocate for the petitioners is that the LIP consumers should pay only those charges which have been specifically levied in respect of that class of consumers and they cannot be burdened with the "transmission and distribution losses" which have been allegedly incurred by DESU while producing and supplying the electricity to different class of consumers in whole of the Union Territory of Delhi. In fact throughout the country, says the counsel, the transmission and distribution losses are taken into consideration while fixing the Tariff and are not levied as fuel adjustment charges which are applicable to only the class of consumers, i.e. LIP consumers. These are inherent in production and distribution of electricity and cannot thus, urges the counsel, be a part of special levy on LIP consumers alone but has to be shared equally by all the consumers. Another facet of the submission is that the fuel adjustment charges have now been levied also on the commercial power consumers and they have to share the burden of transmission and distribution losses which were previously payable only by the LIP consumers but there is no justifiable reason not to spread the burden on all types of consumers. The contention is that the total amount of the fuel adjustment charges is based on an arbitrary formula of the unit sold and not generated plus purchased with the result that in the working of the formula the burden of others is saddled on the petitioners. This is urged as violative of Article 14 of the Constitution. It is also submitted that DESU has possibly extended the fuel adjustment charges on commercial consumers in order to cover up not only the

transmission and distribution losses but also the theft and misuse of electricity losses which are rising every year as is evident from figures furnished before the arbitrator for the years 1977-78 to 1982-83. Our attention is invited to the provisions contained in Section 275 of the Act which imposes a duty on D.E.S.C. to develop and maintain an efficient, co-ordinated and economical system of electricity supply for the whole of the Union Territory of Delhi. It imposes a further obligation in discharge of its functions in relation to electricity supply that the D.E.S.C. shall promote the use of all economical methods of generating, transmitting and distributing electricity.

13. The figure of transmission and distribution losses appear in the accounts of the DESU, copies of which have been placed on the record. The total units generated in DESU's generating plants and those purchased are added up and from this figure is subtracted the figures of units actually sold. The difference is considered as the missing units and is taken in the accounting as the distribution and transmission losses. This method is universally adopted by all other Electricity Boards in India and is considered as the only method through which transmission and distribution losses can be worked out. Theft and misuse of electricity does take place. The counsel for the petitioners has not suggested any method or basis by which the exact figure of theft can be ascertained in a vast net work of distribution of electricity in the Union Territory of Delhi. The element of theft, if any, has to form a part of transmission and distribution losses. Mr. V.P. Singh, learned Counsel for the DESU has brought to our notice that during the year 1984-85, theft of about 70 lacs of units was detected. This is 0.175% of the total sale of electricity. The estimated transmission and distribution losses for the year 1984-85 are 16%. As and when revenues are realised from parties who have stolen electricity, the same are reflected in the sale for the year in which the bills are preferred. The theft of the electricity in our view forms a negligible part of the transmission and distribution losses, and should not detain us any further.

14. The transmission and distribution losses have been included in the statement as 13. it is a part of the accounting. Rule 26 of the Indian Electricity Rules, 1956 enjoins upon the licensee to cause the accounts of the undertaking to be made up by 31st of March of each year. The accounts are to be maintained in the prescribed forms set out in Annexures, IV and V. Annexure IV of the Indian Electricity Rules which is based on Rule 26(3), requires a summary of Technical and Financial Particulars for the year. Items 9 to 13 show that there are unaccounted KWH and thus losses are inherent in the supply of electricity and have to be separately shown. The cost per KWH sold (overall) is worked out by dividing consumers connected load KW with KWH sold. The transmission and distribution losses are not inherent in the production of electricity but only in its distribution. The DESU generates electricity on 11 KV. While doing transmission, it is transformed from 11 KV to 33 KV and then from 33 KV to 66 KV and finally pooled with northern grid after transforming it to 220 KV. While doing the transmission to different parts in the Union Territory of Delhi, 220 KV is again

converted into 66 KV, then to 33 KV and finally stepped down to 11 KV. In this process six transformers are installed and losses in these transformation amount to 15% for stepping up and stepping down of electricity. The power losses in transmission and distribution is taken as $12 R$ (I = current in amperes and R = resistance in Ohms) in the Union Territory of Delhi which is thickly populated. The load on the system is very high and this results in comparatively more transmission and distribution losses than compared to open areas. The petitioners' own case in the writ petitions is that transmission and distribution losses are inherent in the system of distribution of electricity for the consumers.

15. Under the Tariff the energy charges are variable depending upon the actual cost of fuel used plus the actual cost of energy purchased and the quotient computed on dividing the sum of two by KWH sold during the period. The increase or decrease in cost of per KWH sold is the difference. The formula for working out fuel adjustment charges forms part of the Tariff as approved by the respondents from time to time. This Tariff is approved by the respondents in exercise of their statutory powers vested in them u/s 283 of the Act. The challenge to the vires of Section 283 was given up. There is no policy or direction indicated by the legislature in Section 283 that the Corporation is to fix uniform rates to be paid by all classes of consumers. The discretion to fix different rates from different classes of consumers has not been touched. The petitioners and other LIP consumers pay the transmission and distribution losses indirectly on the units of electricity consumed by them. In working out the fuel and purchase cost, the total number of units sold to consumers are taken into consideration. It is only the net sale which has been taken into consideration for working out the cost of electricity per unit. Once the figure has been worked out, it is charged on power units basis from the petitioners and other LIP consumers on the basis of electricity consumed. The petitioners do not pay transmission and distribution losses for electricity consumed by other consumers and what is charged from them is the price of electricity sold worked on a specified formula.

16. In *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, , the Supreme Court considered the question of the price fixation. It was ruled that in ultimate analysis, the mechanics of price fixation is necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of persons, the processual basis of price fixation has to be accepted in the generality of cases as valid.

17. In *Shriram Bearing Limited, Ranchi Vs. Bihar State Electricity Board, Patna and Others*, , the formula contained in Clause 16.7.2 of the Bihar State Electricity Board Tariff came up for consideration. Clause 16.7.2 contained the formula for determining fuel surcharge during the financial year in question. It was submitted that although the total amount of fuel surcharge was to be worked out with reference to the total units generated or purchased from five sources, but it has to be realised only from the consumers of L.T. Industrial Service, H.T. Service, E.H.T. Service and Railway Traction Service, the types of electricity

consumed by the petitioners in that case. This according to the counsel was an arbitrary formula. The stand of the Board was that the total amount of fuel surcharge for the whole State is linked with the rise of price of fuel which is worked out with reference to the total units generated and purchased, but is leviable only on the said class of consumers. The Division Bench of the Patna High Court expressed the opinion that the Board u/s 49 read with Section 59 of the Electric (Supply) Act, 1948 is empowered to frame Tariff and adjust the fuel surcharge in order to meet its genuine expenses and to run the business and the variations in the cost of the fuel have to be borne by some or all. As there is difference in the rate of supply of energy it cannot be said to be unreasonable on the part of the Board to decide to realise the fuel surcharge only from the consumers who are being supplied electricity at a cheaper rate for industrial purposes. The consumers appealed to the Supreme Court by SLP from the judgment of Patna High Court. The decision of the Supreme Court is reported in *Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others*, . The appeals were dismissed. It was ruled that the power to classify the consumers into different categories and to fix differential tariffs has been conferred on the Board by Section 49. Thus, where the State Electricity Board had levied the fuel surcharge by its Tariff Notification on the consumers receiving high tension supply to their factories, while, the consumers of the electricity for domestic, commercial and irrigation purposes were left unaffected by such burden, the imposition of fuel surcharge on such, consumers could not be said to be arbitrary and violative of Article 14 of the Constitution.

18. The burden of fuel adjustment charges in the Tariff in these cases is on the bulk consumers. There may be practical difficulties of provisional billing of all the consumers in Delhi and again adjustment on increased fuel adjustment charges. The cost of accounting may be more than the additional recovery. Then there are small domestic consumers, or petty farmers who are supplied electricity for irrigation purposes. It is the policy to not to burden them unnecessarily. The burden is shared by the DESU itself.

19. Under the Tariff there is an adjustment clause regarding energy charges payable by the bulk consumers like LIP Consumers. The formula envisages that adjustment of energy charges will be based on increase or decrease in fuel cost and increase or decrease in the cost of power purchased. This cost would become factually available only after the electricity is sold to the consumers. As the Tariff shows the LIP Consumers are those having load above 100 K.W. Character of service provided to them is AC 50 cycles, 3 phase, 11 KV. The demand charges are fixed but energy charges of 85 paise or 84 paise per unit is variable under the fuel adjustment clause. The L.I.P. Consumers pay fuel adjustment charges only on electricity consumed by them. As far as electricity consumed by other category of consumers concerned, the extra expenses of the same are borne by DESU. Different rates have been fixed for various categories and on the basis of total consumption by a consumer. For example, in domestic lighting the Tariff is 27 paise per unit if the consumption is 100 units, and next 32 paise per unit, on

next 100 units and 75 paise per unit on all consumption above 200 units per month. Tariff for nondomestic is 89 paise per unit. The agricultural Tariff is 20 paise per unit. There are valid considerations to fix differential rates. A classification of bulk consumers has a rational nexus for the object and purposes of the supply and collection of price of electricity sold. Applying the ratio of the judgment of the Supreme Court to the facts of this case, the levy of the fuel adjustment charges on the-petitioners alone cannot be construed as arbitrary or discriminatory.

20. That takes us to the consideration of the inclusion of the component demurrage charges in ascertaining the actual cost of fuel used. The working of the formula depends upon as to what is the actual cost of the fuel used. The arbitrator referred to the statement contained in the affidavit of Shri D.C. Seth, which had given the average rate for the year 1981-82 and which comprised of 10 items including the component of demurrage charges. The Arbitrator held that demurrage charges incurred by the DESU are not relevant for determining the actual cost of the fuel for the purpose of adjustment. We held different view.

21. According to the agreement of DESU with Railways the demurrage charges in respect of those wagons which cannot be released within the stipulated fixed time are payable. The affidavit says:

In this connection, it may be stated that at times on account of heavy inflow of the wagons placed at our siding and keeping in consideration the time taken for unloading of the wagons and clearing of the tracks, the demurrage becomes unavoidable. Since there are other constraints and operational problems due to round the clock placement of the wagons etc., by the Railways, the Railways are requested for waiver of the demurrage charges and the Railways have been kind enough to accord waiver of demurrage charges to the extent of 75 per cent to 90 per cent. The demurrage accrues mostly on account of reasons given below:

(a) The placement is made round the clock with time result that the maintenance of the plant cannot be done and, therefore, sometimes due to the repairs and maintenance of the plant detention of wagons occurs. Moreso, DESU has only one tippler and there is no stand-by arrangement.

(b) The Railways resort to bunching of wagons, i.e; rakes are placed without allowing free time.

(c) Due to mechanical failure of the tippler, manual unloading has got to be done which results in detention of the wagons.

(d) Delay in de-railment of wagons by the Railways and receipt of sick/damaged wagons in the coal rakes cause delay in shunting and unloading of wagons.

22. It must be left to the commercial judgment of the DESU as to whether they require only one tippler and there is no need to have a stand-by arrangement or to have a stand-by arrangement by incurring heavy capital costs with no purposeful utility. A balance has also to be maintained as to the engaging of

extra regular staff for manual unloading of coal when occasionally rakes are received in bulk. The cost of extra coal handling and loco staff may ultimately work out more than the payment of the demurrage charges. All these questions, therefore, have to be left to the cost accounting of DESU but it cannot be said that the demurrage charges cannot be included in the actual cost of fuel used.

23. The next submission of the counsel for the petitioner is to the revised bill for the year 1979-80 sent in July 1985. Our attention is invited to Section 206 of the Act, imposing a duty upon the Municipal Chief Auditor to deliver to the standing committee a report of the entire municipal accounts for the previous year and this has to be done as soon as possible after the commencement of each year. Section 455 lays down the mode of recovery of dues, and provides that no proceedings for the recovery of any sum under that Section shall be commenced after the expiry of three years from the date on which such sum becomes due. The contention is that the Municipal Chief Auditor must have submitted to the Corporation the report of the entire municipal accounts including those of respondent No. 2, as soon as after the commencement of each year but in any case within the next financial year. The demand for the year 1981-82 and 1982-83 is also urged as barred by limitation. We are concerned in these cases with the fuel adjustment charges. The terms of the Tariff is that final adjustment on account of variation in the energy charges will be made as soon as after the close of the period of account. The word employed in the statutory Tariff is "as soon as possible". The fuel adjustment charges are levied on the basis of actual expenditure incurred in generation and purchase of energy and the actual units sold and the compilation of these figures by the Chief Municipal Auditors some times may take considerable time. It is for this reason that in the Tariff it is provided that final adjustment would be made as soon as possible. The cause of action to make a demand would not accrue unless the accounts are settled. The fuel adjustment charges would not become due and thus proviso to Section 445 cannot be called in aid by the petitioners. A similar question came up for consideration before Rajasthan High Court in Delhi Cloth and General Mills Co. Ltd., Kota Vs. Rajasthan State Electricity Board and Others, with which we are in respectful agreement. It was ruled in para 21 that:

So far as the provision to work out the rate of fuel surcharge at the end of each year is concerned it cannot by any stretch of imagination be said to be mandatory. It is an enabling provision which gives power to the Board to work out the rate at the end of each year. There is no provision laying down the maximum period for working out the rate of fuel surcharge. There is a clear provision for working out the rate of fuel surcharge on provisional basis according to the rate for the previous period and final adjustment has been made permissible when the final rate of fuel surcharge is worked out. The Board in its reply has clearly brought out justification for delay in working out final rate. This justification for delay has to be decided on the anvil of reasonable basis. Even if for some period it may be assumed that there was no explanation, it cannot disentitle the Board to demand the final rate of fuel surcharge under such

enabling provision. There is no infringement of any legal or fundamental rights of the petitioners in demanding the fuel surcharge worked out on final basis by the Board.

24. The last submission of the counsel for the petitioners is that the Tariff Clause (B) dealing with the L.I.P. Consumers like the petitioners states that all charges are subject to a maximum overall rate of Rs. 1.10 per KWH without prejudice to the minimum payment as laid down in Item (g) and adjustment Clause (xvii) under General Conditions of Application. The submission is that DESU cannot bill the petitioners at any rate above Rs. 1.10 per KWH while the rate in the bill amounts to much more than the same. The copy of the bill is at page 151 of the Court record and we made calculations during the course of the hearing. The overall maximum rate of Rs. 1.10 KWH on the number of units consumed has not been exceeded. The counsel then did not press the point further.

25. No other point is urged. The writ petition fails and is hereby dismissed with no orders as to costs.