

(1981) 04 GUJ CK 0023
In the Gujarat High Court

Gujarat Electricity Board

APPELLANT

Vs

Consumer Education Research Center and Others

RESPONDENT

Date of Decision : 20-04-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 57A

Citation : (1981) 22 GLR 1076

Hon'ble Judges : R.C. Mankad, J;M.P. Thakkar, J

Bench : Division Bench

Judgement

M.P.Thakkar, J.—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 coexistence 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 eradicated and a naughty child 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 leveled 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. But as the matter has been argued strenuously and at some length let us consider the matter in greater detail and catalogue the relevant facts and indicate the course of arguments at this juncture.

2. The Gujarat Electricity Board-Original respondent No. I in Special Civil Application No. 3692 of 1979, has approached this Court by way of present application praying that the previous order, restraining the Gujarat Electricity Board (hereinafter referred to as the Board) from increasing its tariff, passed on February 6, 1980, be vacated, or the Board be permitted to increase its tariff to such an extent as to enable the Board to raise additional revenue to the extent of Rs. 40 crores a year, having regard, to the fact that the cost of production of energy has tremendously increased by virtue of the increase in the working expenses, including, the cost of fuel oil, cost of other materials, and the expenses on salary and wages, as also the expenditure required to be incurred in several other spheres. It is the case of the petitioner company that the last revision of tariff was effected on 1-11-1978 by the Board and that the Board has not been able to increase the tariff thereafter in view of the injunction granted by this Court on February 6, 1980 restraining the Board from increasing the tariff except to the extent of enforcing the fuel adjustment clause. This application is made pursuant to the liberty granted by the Court to the Board at the time of passing the aforesaid interim order on February 6, 1980 which is in the following terms:

Interim injunction restraining respondent No. I from enhancing tariff rates in future except enforcing fuel adjustment clause. Liberty to Resp. No. 1 to apply.

In paragraph 5 of the application the statistics pertaining to the losses being sustained by the Board have been given. The statistics may be tabularised in the following manner:

	Year Deficit
1978-79.	392 lacs
1979-80.	908 lacs
1980-81.	3378 lacs (as estimated at the close of the Accounting year on March 31, 1981). The Board has further stated that the budget for 1981-82 would also show that there will be deficit of the aforesaid order (Rs. 3378 lacs) in the next year as well.

3. The Board has, in paragraph 6 of its application, furnished the particulars regarding price increase which may be tabularised as under;

	Category.	Previous price.	Present price.
	Coal	Rs. 235 per M.T.	Rs. 290 per M.T. (Till Dec.

1980). Residual fuel oil at generating Rs. 1826 per M.T. Rs. 2210 per M.T. stations other than Dhuvaran) Residual fuel Oil at Dhuvaran. Rs. 407 per M. T. Rs. 422 per M.T. Increase of Rs. 56 crores. Increase due to revision of pay-scales and increase Rs. 11 crores. in the D.A. Increase in operation and maintenance expenses. Rs. 5. 75 crores. Rs. 72. 75 crores. It is furthermore stated, in para 8 of the application, by the Board that it will be required to contribute towards part of the cost of the Ukai Dam, which would result in an increase in depreciation and interest charges, estimated at about Rs. 332 lacs per year.

4. In paragraph 9 of the Application, it has been stated by the Board that in view of the undertaking given by it to the World Bank for obtaining financial assistance for rural electrification works and transmission work, the Board is required to achieve and maintain a rate of return of 9.5 per cent on the Average capital base. It is stated that in order to fulfill the said undertaking the Board will be required to raise an additional revenue of the order of Rs. 4080 lacs during the year 1981-82. The Board has estimated sale of electricity by the Board in 1981-82 at 7700 Million Units and for meeting this deficit an upward revision of tariff by at least 5.30 paise per unit, on an average, would be called for, though the actual increase in the rates of tariff for different categories of consumers would have to be worked out in consultation with the State Government, later on.

5. In paragraph 11 of the petition, the Board has referred to the increase as made by other Electricity Boards and licensees generating electric power, in other States, the particulars whereof may be tabularised as under:

	Name	Extent of increase
	Karnataka State Electricity Board.	43% to 50% (in respect of medium and large scale industrial consumers. The increase being to the extent of 9.5 paise made in February '81.)
	Andhra Pradesh State Electricity	4 to 8 paise per unit for high & Board. low tension industrial consumers w.e.f. November 1980.
	Tata Electric-Companies.	16%

6. On the aforesaid premises the Board has prayed for two reliefs namely (1) either vacating the previous order or (2) modifying the order by permitting the Board to raise its tariff to such an extent as to enable it to raise additional revenue of Rs. 40 crores per year leaving it to the Board to distribute the increase in respect of different categories of consumers as may be considered fit by the Board.

7. This application has been strongly resisted by the original petitioners, namely, Consumer Education Research Center and its co-petitioners. It has been strenuously argued that the functioning of the Board is not efficient. The Board

could have effected a considerable saving by increasing its efficiency and effecting some economy so as to bring down its cost structure. It is also contended that instead of granting any of the prayers the main petition should be fixed for hearing at an early date. A point is also made that the Board has failed to take advantage of the liberty to enforce the fuel adjustment clause granted at the time when the interim order was made at an earlier stage on February 6, 1980 (the text whereof has been reproduced in the earlier part of this judgment). The counter-affidavit filed by the Board shows that the liberty to enforce fuel adjustment clause wherever it existed has been availed of in respect of all categories of consumers except in respect of the agriculturists. It would not be necessary for the present purposes to refer to numerous averments made in the affidavit, affidavit-in-rejoinder and the further affidavit filed by the parties for, in our opinion, the scope of the present application is somewhat limited.

8. Before we proceed further, we consider it essential to advert to the nature of the ultimate relief claimed by the petitioners in paragraph 25 of the main petition which may be quoted 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 57-A relating to Rating Committee read with Schedule VI apply to the Board and that Rating Committee may be appointed to examine tariff rates fixed by the Board;

(D) declaring Sections 26, 57, 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;

(E) in alternative declaring the 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 dependency of this Spl. C. A. the respondent Board may be restrained from implementing tariff dated 1-11-1978 and enhancing the rates in any manner.

(G) awarding the costs of this petition.

(H) directing the respondent Board to refund to 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%.

It is in the context of the aforesaid relief's claimed in the main petition that the prayer for vacating the interim relief or in the alternative permitting the Board to raise its tariff to such an extent as to enable the Board to raise additional revenue or Rs. 40 crores a year, will have to be considered.

9. 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 practice. 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 Center, 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 grievances? 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 unfavorably 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-avis 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 relief's 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.

10. Having regard to the circumstances of the case, we are of the opinion that the Board must be permitted to increase its tariff to such an extent as to enable it to raise additional revenue of 40 crores per annum (actual increase for different categories of consumers being left to be determined by the Board).

11. We, therefore, grant prayer made by the Board in para 13(b) of the Application. Civil Application is allowed. Rule is made absolute to the aforesaid extent. There will be no order as to costs.