

(1999) 11 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16587 of 1990 and 863 of 1993

KCP Ltd., Guntur

APPELLANT

Vs

APSEB, Vidyut Soudha, Hyderabad and others

RESPONDENT

Date of Decision : 01-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) Act, 1948 — Section 18, 26, 49, 5, 59
Electricity Act, 1910 — Section 2(1), 36(2)

Citation : (2000) 1 ALD 49

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. K.N. Jwala, SC for APSEB and Mr. C. Kodand Ram, for the Appellant; Government Pleader for CS, for the Respondent

Judgement

1. The petitioner in Writ Petition No.16587 of 1990 is a Public Limited Company registered under the Companies Act, 1956 and it had setup among other things a Cement Plant at Macherla in Guntur District. The petitioner questions the legality and validity of levy and collection of Rs.18 lakhs towards service line charges and Rs.20,000/- towards service connection charges for releasing an additional load of 3000 KVA. The petitioner also questions the legality and validity of BPMS No.1 160 (Commercial), dated 3-11-1989 and also the mode of computation of service line charges as illegal and ultra vires of the provisions of the Indian Electricity Act, 1910.

2. The brief facts leading to the filing of the writ petition are as under: The petitioner-Company entered into an agreement with the 1st respondent-Board and is availing electricity supply for its Cement Plant at Macherla classified as High Tension (HT) consumer. The petitioner was initially availing supply at a voltage of 11KV. The 1st respondent-Board issued BPMS No.607, dated 21-7-1981 whereunder the consumers availing HT supply were required to change over to the stipulated voltages depending on their contracted maximum demand. Under the aforesaid Board proceedings, the petitioner is required to

avail supply at 132 KV in place of existing 11 K.V and the petitioner spent a crore of rupees in making arrangements to receive supply at 132 KV by erecting a sub-station. The petitioner was also asked to pay Rs.32.263 lakhs towards service line charges which were duly paid for the purpose of laying 132 KV supply line to its factory. The petitioner started availing supply of 132 KV from 23-6-1989 because of the delay on the part of the Board in releasing supply at 132 KV. The petitioner-company had undertaken the process of modernisation and expansion of its Cement Plant and to meet the additional requirements had requisitioned for an additional load of 3000 KVA over and above the existing demand of 8000 KVA on 20-7-1988. The same was duly sanctioned and the petitioner was asked to pay a sum of Rs.18 lakhs towards the service line charges and Rs.20,000/- towards service connection charges for releasing the additional demand which were paid on 24-11-1989. The additional load was released on 11-1-1990.

3. The contention of the petitioner is that the said collection of Rs.18 lakhs towards service line charges is unjustified since the release of additional load requisitioned required only a technical sanction and do not require installation of any additional equipment or service line. The petitioner contended that under the Electricity (Supply) Act, 1948 (hereinafter referred to as "Supply Act") and Indian Electricity Act, 1910 (hereinafter referred to as "Electricity Act") and its schedules, rules and conditions of supply notified by the Board the service line charges are payable only towards cost of laying so or to amend the existing service line as may be necessary to be laid upon the property in respect of which requisition is made excluding the first 100 feet from the licensee's distributing mains. The petitioner further claims that the levy and collection of Rs.20,000/- as service connection charges is unauthorised, irregular and improper and the said collection is without authority and the release of additional load is without rendering any service and thus the said charge is assailed as arbitrary, expropriatory and confiscatory in nature.

4. The writ petition is opposed by the respondents, inter alia, contending that the 1st respondent-Board is a statutory body constituted u/s 5 of the Supply Act charged with the obligation to supply electricity to all including industries and for the purpose of fulfilling the said obligations and statutory duties, the Board had invested enormous amounts running into several hundred crores of rupees for acquisition of equipment, establishing the generating stations, laying distributing lines etc. The Board has to borrow from several organisations and it had to repay the said loans with interest. The Board had to erect electricity sub-stations for transmitting the power from the generating stations and to distribute the same among the various classes of consumers at different voltages. It is further pleaded that before extending supply to the consumers through service line, the Board had to transmit the power through the transmission lines to the sub-stations and the quantum of power to be transmitted depends upon the capacity of the generating stations and sub-stations. Wherever new/ additional loads are requisitioned by the existing/prospective consumers, the Board invariably had to make necessary changes to its infrastructure either by increasing the capacity of

the sub-stations or erecting new sub-stations. In some cases the capacity of the generating stations had to be increased which required enormous amount of capital investment. The Board pleaded that initially it had been collecting the cost of service line charges from the consumes/prospective consumers under voluntary loan contribution scheme, whereunder the amount collected towards service line charges were refundable after the stipulated period together with interest. However, the Board thought that the said system was not satisfactory as the same is not strictly in accordance with the statutory provisions and hence by BPMS No.693, dated 19-9-1985, the Board had introduced the system of collection of service line charges with reference to connected load/CMD requisitioned. The Board after further detailed examination and in supercession of the earlier orders and in exercise of its power u/s 49 of the Supply Act, had issued BPMS No.1160 (Commercial), dated 3-11-1989 introducing the system of collection of service line charges including the charges for amendment of existing line, if any, required. The said charges shall be collected on the basis of power requisitioned both for new and additional loads and at the slab rates for each kilometre of the distance between the distribution main and consumer's point of supply. In the annexure to the said proceedings, the service line charges payable by different categories of consumers were specified. In respect of the petitioner-company which is receiving supply at 132 KV, the service line charges stipulated were Rs.600 per each KVA of demand requisitioned plus line charges of Rs.5 lakhs per KM. Pursuant to the said orders, the service line charges were calculated and collected from the petitioner. Thus, the Board claims that the petitioner is not entitled to claim the refund of the said amount. As regards BPMS No.1160, dated 3-11-1989, it is stated by the Board that it was issued in exercise of the statutory power u/s 49 read with Section 59 of the Supply Act and thus the same is valid.

5. It transpired that during the pendency of the writ petition in this Court, the petitioner approached the Chief Electrical Inspector, Government of Andhra Pradesh by raising a dispute as regards the collection of service line charges and the Electrical Inspector purporting to exercise the power under clause VI(3) of the schedule of Electricity Act had decided that the respondent-Board had not incurred any expenditure in releasing the additional load of 3000 KVA and accordingly held that the Board is not entitled to collect the said sum from the petitioner and also declared that BPMS No.1160, dated 3-11-1989 is inconsistent with clause VI of the Electricity Act and thus not valid. In the normal course, the writ petition would have become infructuous since the petitioner had obtained the relief sought for from the Chief Electrical Inspector. However, the respondent-Board filed Writ Petition No.863 of 1993 questioning the order passed by the Electrical Inspector, inter alia, contending that the Chief Electrical Inspector had no jurisdiction to decide the dispute. It is asserted that under clause VI(3) of the schedule, the Electrical Inspector is empowered to adjudicate any dispute or difference relating to the cost of any service line and the subject-matter of the dispute does not fall within the jurisdiction of the Electrical Inspector as the

amount was collected from the petitioner though styled as service line charges, in effect, it is nothing but partially recouping the huge investments made and to be made by the Board on EHT/HT/LT lines, establishment of sub-stations, erection of distribution transformers, establishment of generating stations etc. According to the Board, the order passed by the Electrical Inspector is without jurisdiction and the order dated 30-5-1992 is liable to be set aside. The said writ petition is opposed not only by the petitioner-Company, but also by the Chief Electrical Inspector by filing a counter-affidavit. The learned Counsel appearing for the Board criticised the action of the Electrical Inspector filing a counter-affidavit and defending his own proceedings on the ground that the Electrical Inspector, being a quasi-judicial authority cannot support his decision by filing a counter-affidavit and that in a writ petition to quash the decision by issuance of writ of certiorari, the authority shall only produce the records. The petitioner-Company also opposed the said writ petition contending that the Electrical Inspector is having jurisdiction to decide the dispute by virtue of clause VI(3) of the schedule to the Electricity Act and consequently the order passed by the Electrical Inspector is justified. It is also contended that the Board is not justified in approaching the Court questioning the order passed by the Chief Electrical Inspector, according to the petitioner, the Board had an effective alternative remedy by way of an appeal as provided by Section 36(2) of the Electricity Act.

6. Elaborate submissions were made by Sri C. Kodandaram, learned Counsel appearing on behalf of the petitioner-company and Sri C. Seetharamaiah, senior Standing Counsel appearing for Sri K.N. Jwala, the learned standing Counsel appearing for the Board in support of their stands. The parties are referred to as they are arrayed in Writ Petition No.16587 of 1990.

7. It would be better if the objection raised by Sri C. Kodandaram, regarding the availability of alternative remedy to the Board against the order passed by the Electrical Inspector dated 30-5-1992 and whether the existence of such remedy would bar the Board from invoking the jurisdiction of the Court under Article 226 of the Constitution of India. The Electrical Inspector had passed the order dated 30-5-1992 purporting to exercise of the powers under clause VI(3) of the Electricity Act. While deciding the dispute, the Electrical Inspector had declared that BPMS No.1160 dated 3-11-1989 even though notified by the Board in exercise of the powers u/s 49 of the Supply Act, is inconsistent with clause VI of the Electricity Act and hence not valid. Precisely, the validity or otherwise of the aforesaid BPMS No. 1160 is the subject-matter of Writ Petition No.16587 of 1990 filed by the petitioner herein. It is contended by the Board that the dispute does not fall within the purview of clause VI of the schedule to the Electricity Act and consequently the orders passed by the Electrical Inspector dated 30-5-1992 is totally without jurisdiction and consequently it is not necessary to avail the appellate remedy provided under the Act. The learned senior Counsel appearing for the Board in support of his contention relied upon the judgment of the Supreme Court in Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , wherein it has been held that an

alternative remedy is not an absolute bar to the maintainability of the writ petition especially in cases where the authority who passed the order had acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In view of the said law laid down by the Supreme Court and also in view of the fact that the validity of BPMS No. 1160, dated 3-11-1989 is the subject-matter of Writ Petition No.16587 of 1990 filed by the petitioner-Company where this Court is called upon to pronounce on the validity of the aforesaid Board proceedings, I do not deem it fit to reject the writ petition on the ground of existence of alternative remedy. Accordingly, I rejected the contention of the learned Counsel for the petitioner-company.

8. Whether BPMS No.1160 (Commercial), dated 3-11-1989 is illegal and contrary to the provisions of the Supply Act and Electricity Act as contended by the petitioner: A brief history leading to the issuance of the said Board proceedings may be necessary to examine its validity. Clause VI of the schedule to Electricity Act deals with the requisition for supply by owners or occupiers. Under the said clause, after the distribution lines have been laid by the licensee, where a requisition is made by the owner or occupier of any premises within area of supply requiring the licensee to supply energy for such premises, the licensee shall within one month from the making of the requisition or within such longer period as the Electrical Inspector may allow, supply energy in accordance with the requisition. But, however, the licensee shall not be bound to supply as per the requisition unless the person making them requisition (a) within 14 days after service of a notice, tenders to the; licensee, a written contract in the approved form with sufficient security binding himself to take supply of energy for not less than two years to such amount as will assure to the licensee, an annual revenue not exceeding 15% of the cost of the service line required to comply with the requisition. Further if required by the licensee so to do, pays the cost of so much of any service line as may be laid down or placed for the purpose of supply upon the property in respect of which the requisition is made and of so much of any service line as may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main. The said clause also empowers the licensee to discontinue the supply in the circumstances enumerated therein.

9. According to the learned Counsel for the petitioner, the Board being a licensee by virtue of Section 26 of the Supply Act shall have all the powers and obligations of the licensee under the Electricity Act and thus the Board is not entitled to stipulate service line charges in excess of what clause VI stipulates. The learned Counsel referred to the definition of service line u/s 2(1) of the Electricity Act which defines the service line as under:

"Service line" means any electric supply-line through which energy is, or is intended to be, supplied-

(i) to a single consumer from a distributing main or immediately from the

suppliers premises (or)

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises, supplied from the same point of the distributing main.

10. It is true as contended by the learned Counsel for the petitioner the cost of supply line through which energy is intended to be supplied shall not exceed as stipulated in clause VI, But, however, the contention of the learned Counsel for Board is that the word "service line charges" is mentioned in BPMS No. 1160, dated 3-11-1989, in fact what is sought to be collected is part of the cost of extension of supply to the consumer which includes not only the cost of service line from the distributing main but also the expense incurred by the Board for creating the necessary infrastructure for extending such supply. The learned Counsel submitted that the nomenclature therefore is not decisive, but it is the nature and purpose of the charge and its substance that should be looked at. In support of his contention, the learned Counsel relies upon the judgment of the Supreme Court in *Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another*, . In the aforesaid case, the Orissa Electricity Board levied a surcharge of 10% on the power tariff in respect of power intensive industries and domestic power and lighting. The aforesaid levy was questioned on the ground that the Board has no power under the Act to levy such a surcharge. The Board supported the said levy contending that u/s 49 of the Supply Act, the Board is entitled to impose such a levy and further pleaded that the surcharge is nothing but a part of power tariff. While examining the said contention, the Supreme Court observed that though the levy is in the form of surcharge, it is in substance an addition to the stipulated tariff. The nomenclature therefore, does not alter the position.

11. BPMS No. 1160, dated 3-11-1989 contemplates levy of two kinds of fixed charges:

(1) charges at the stipulated rate per KVA of demand/additional demand requisitioned; and

(2) the fixed rate per KM of line to be laid called line charges.

12. Section 49 of the Supply Act empowers the Board to fix uniform rates of tariff and the Board is empowered to frame the terms and conditions of supply. The power of the Board to frame terms and conditions of supply is the subject-matter of several cases before the Supreme Court. The power of the Board to frame terms and conditions of supply was examined by the Supreme Court in *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, . The Supreme Court had held that Section 49 empowers the Board to supply electricity on such terms and conditions as it thinks fit. The terms and conditions of supply are statutory in character and the terms and conditions of supply should be subject to the provisions of the Act. In the light of the aforesaid law laid down in the Supreme Court, it is to be considered whether the impugned Board proceedings dated 3-11-1989 are referable to the power u/s 49 of the

Supply Act and if so, whether they can be declared as invalid on the ground that they are inconsistent with clause VI of the schedule to the Electricity Act.

13. Before dealing with the contentions urged, it would be convenient to examine the provisions contained in the Electricity Act and the Supply Act. Electricity Act deals with grant of licences by State Government. A licensee to supply energy shall undertake the works necessary therefor. It deals with supply of electrical energy by the licensee and the obligations of the licensee to supply such energy to those within the area of supply on the same terms on which any other person in the same area is entitled in similar circumstances to a corresponding supply. It obligates the licensee to supply energy charges for the supply of energy are to be made without undue preference. The Act provides for the discontinuance of electricity supply to the consumer and installation of meters for ascertaining the quantity and amount of supply made to a consumer, supply, transmission and use of energy by non-licensees, appointment of Electrical Inspector besides dealing with the offences and the procedure therefor.

14. Supply Act deals with Constitution of Central Electricity Authority, State Electricity Boards, Generating Companies. u/s 18 of the Act, the general duties of the Board (which is a licensee within the meaning of Section 26 of the Electricity Act) have been specified. The Board is obligated to arrange for supply of electricity that may be required within the State and for the transmission and distribution of the same to the consumers in an efficient and economical manner with particular reference to those areas which are not for the time being supplied or adequately supplied with electricity. The Board is further obligated to collect data on the demand and the use of electricity and to formulate prospective plans in co-ordination with the Generating Companies to prepare and carry out schemes for distribution and for promoting the use of electricity within the State.

15. It is evident from the above, the duty of the Board is different from a licensee under the Act. Under the Supply Act, the Board is charged with the duty of supplying electricity not only to those areas which are supplied with energy, but those which are not being supplied with energy in an efficient and economical manner. The Board is also obligated to formulate a scheme for generation, transmission and distribution of electrical energy. Thus, unlike a licensee whose obligation is to supply energy to the person within the area of supply, the Board is charged with the duty to supply electricity to any person upon such terms and conditions as the Board thinks fit. The Board for the purpose of complying with its obligations is empowered to take subventions from the State Government u/s 63 of the Act, besides power to borrow loans from the State Government and, also from others with the previous sanction of the State Government subject to such conditions as may be prescribed in that behalf. Thus, the sources of finances of the Board are the subventions made by the State Government and the resources generated by collecting the charges from its consumers apart from loans. u/s 59 of the Supply Act, the Board shall carry on its operations under the Act and use its tariffs so as to ensure that the total revenues in any year after

meeting all expenses shall generate a surplus as is not less than 3% or such higher percentage as the State Government may allow. Thus, the Board has to carry on its operations like a prudent businessman and generate the statutory surplus. The only source therefore being the charges levied and collected from the consumers and the subventions made by the State Government. Though the Board is empowered to borrow from the State Government and others subject to such conditions as may be prescribed by the State Government, the fact remains that the payment of such loans and interest thereon shall be only out of the aforesaid revenues generated by the Board. The obligation of the Board u/s 18 is to supply energy to the entire State including those areas for which there is no supply and strengthening the supplies to areas already supplied with the electricity. For the purpose of generating electricity, the Board shall have to establish generating stations which involves a huge capital outlay and lay transmission lines for supply of such energy to the sub-stations. Again sub-stations will have to be erected and distribution lines will have to be laid from the sub-stations to the consumers. This naturally involves huge expenditure. Such expenditure shall have to be collected only from the consumers. It cannot be expected that the Board could generate funds for meeting its obligations except in the manner provided in the Act. When a consumer makes a requisition for supply of electrical energy, in a given situation where the transmission lines are already erected and the distributing lines are laid, the Board may without further addition or modification to the existing infrastructure be able to deliver such energy to the consumer. In some cases, where a consumer requisitions electricity supply may involve laying of transmission and distribution lines. If the argument of the petitioner is accepted, in the former class of cases the consumers would get the supply at a cheaper cost when compared to the later class of consumers which would result in inequitable apportionment of the cost of the infrastructure. In such an eventuality, the industrial growth would be limited in and around generating stations only. Thus, with a view to develop the distribution system in all parts of the State, it is necessary that the Board should charge the requisitionists in an equal manner so that each of the consumer requisitioning supply or additional supply would contribute to the capital expenditure to be expended by the Board for additional generation, erection of transmission lines and sub-stations besides laying distribution lines to the consumer's point of supply. Therefore the method adopted by the Board in distributing the capital expenditure on all consumers in a rational manner on the basis of the demand requisitioned cannot be termed as irrational or arbitrary, it does not lie on the mouth of the consumer that the distribution lines are already laid and as such there is no obligation to make any payment to the Board to extending supply or additional supply it cannot be left to chance. The Board being instrumentality of the State is subject to the same constitutional and public law limitations as are applicable to the Government including the principles of law which inhibit arbitrary action of the Government as laid down by the Supreme Court in *Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others*, . Thus, the Board is justified in distributing the capital cost incurred by it

on all consumers requisitioning supply on the basis of the demand requisitioned in like manner from wherever such industry is located and such action of the Board is in strict adherence of the constitutional requirements of fairness in action. If Board adopts any other method of charging, then such method is likely to be termed as discriminatory and offending under Article 14 of the Constitution.

16. The Supreme Court in *Kerala State Electricity Board v. S. N. Govinda Prabhu and Brothers* 1986 (4) SCC 199, had held that the Board is a public utility monopoly undertaking which may not be guided by the policy of profit making but it must manage its affairs on sound commercial lines though not with a profit thirst. It must be able to pay interest on loans taken by it, discharge its debt and must be able to give efficient and economic service by providing for depreciation etc., and continue due performance of services by providing expansion of its services. The Supreme Court rejected the argument that the Board being a Public Utility Undertaking cannot generate profits and held that the principles of efficiency and economy are not forsaken but emphasised by the Act. A large part of expenditure involved in setting up of new projects had to be met in several years preceding the actual commissioning of the projects. The said principle was reiterated in *M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others*, wherein it was held that even where the Board generates surplus such profit is made not merely for the sake of profit but for the purpose of better discharge of the obligation of the Board and when the Board acted as such, it cannot be said that the Public Enterprise had acted beyond its authority. Though the aforesaid judgments rendered by the Supreme Court while examining the tariff revision made by the Electricity Board but the principle underlying therein will equally apply to the facts of the present case. Thus, in my considered view the Board is entitled to collect from the consumers the pro rata capital cost incurred or proposed to be incurred for expanding its facilities from the prospective or existing consumers seeking loads and the same can neither be deemed as irrational nor arbitrary and it is neither confiscatory nor penal. But on the other hand, it is an obligation cast on the consumers to contribute to the Board to enable it to discharge its statutory obligations with which it is charged. Thus, viewed from this perspective the charges demanded by the respondent-Board under BPMS No.1160, dated 3-11-1989, though styled as service line charges is nothing but collection of pro rata capital cost on the basis of demand requisitioned, which the Board is lawfully entitled to collect from its consumers in exercise of its power by framing terms and conditions of supply u/s 49 of the Act.

17. The contention of the learned Counsel for the petitioner that clause VI of the schedule empowers the licensee only to collect such cost of service line as may be laid down or placed for the purpose of supply upon the property beyond 100 feet from the licensee distribution main, though in the first blush appears attractive but on a close scrutiny such contention does not stand. The power of the licensee to collect from the consumer towards the service line charges is the one that is enumerated in clause VI of the schedule. In addition to the same, the Board is also empowered to collect from the consumers the pro rata cost of

capital expenditure incurred by the Board for generating, transmitting and distributing the electrical energy and such liability of the consumer is in addition to the clause VI of the schedule. Whether such collection is prohibited by clause VI of the schedule is the question that needs to be examined. Whenever a requisition is made by the owner for supply of energy the licensee is obligated to comply with the same and supply energy but however, the licensee is not bound to supply unless the consumer pays the cost of service line charges in terms of clause VI(1)(b). This is the obligation of the consumer to be complied with before calling upon the licensee to supply energy. The said clause do not prohibit the licensee from laying down additional conditions in exercise of its powers u/s 49 of the Supply Act. Clause VI of the schedule is only illustrative but not conclusive of the rights and obligations of the licensee and the consumer. There is no prohibition in clause VI debarring the Board to collect charges not specified therein, If such limitations are to be read in clause VI, then the power of the Board u/s 49 becomes redundant since u/s 49 the Board cannot frame any terms and conditions of supply except those enumerated in clause VI of the schedule and such a limitation cannot be read in clause VI. Further the said clause was part of 1910 Statute and Section 49 came into being in 1948 and u/s 70(1) of the Supply Act, any provision of 1910 Act to the extent it is inconsistent with the provisions of the Supply Act shall have effect. Thus, if clause VI is inconsistent with 1948 Act, then the 1948 Act prevails. In view of the foregoing, it is clear that clause VI empowers the licensee to collect the actual service line charges from the distribution main to the consumer's premises but what is collected by the Board under BPMS No. 1160 (Commercial) dated 3-11-1989 is the pro-rata cost of capital expenditure that has to be expended by the Board for affording such supply and thus the first part of levy on the basis of demands requisitioned is intra vires of the powers of the Board u/s 49 of the Supply Act.

18. It is contended by the learned Counsel appearing for the petitioner-Company that in the annexure to impugned proceedings dated 3-11-1989, the Board had prescribed a sum of Rs.600/- per KVA of CMD plus line charges of Rs.5 lakhs per KM and though the first portion of the prescribed per KVA of CMD is the relatable to partial contribution of the consumer towards capital cost but still the sum of Rs.5 lakhs per KM charged is the actual service line charges as envisaged by clause VI and it is not open to the Board to fix a slab rate for extending supply. The learned Counsel drew my attention to para 4(e) of the impugned proceedings wherein it is stated that line charges from main to consumer point of supply shall be worked out deducting the cost of line laid on the property other than the consumer's property subject to a maximum of 3.40 metres. The learned Counsel for the Board tried to justify the same contending that the said charge is also notified by the Board in exercise of its statutory power u/s 49 of the Supply Act. I am unable to accept the contention of the learned Counsel appearing for the Board. The Board prescribed fixed amount in respect of each KVA of demand requisitioned by the consumer and it is towards partial cost of capital expenditure which the Board is entitled to demand from the consumer in

exercise of the powers u/s 49 of the Supply Act. But the collection of line charges at Rs.5 lakhs per KM is relatable to the laying of service line within the meaning of clause VI. This is further fortified in view of para 4(e) that the Board proceedings which states that the line charge from conditions of supply and the only limitation being that the terms and conditions so framed should not be discriminatory or arbitrary. In order to examine the said contention, it is necessary to examine the terms of the agreement which is in a prescribed form appended to the terms and conditions of supply notified by the Board. Under clause 3 of the agreement, the consumer agrees to take the specified contracted maximum demand. Clause 5 obligates the consumer to comply with the terms and conditions of supply prescribed from time to time. Clause 9 obligates the consumer to comply with the contracted maximum demand charges, surcharges, meter rents and other charges applicable in accordance with the tariffs notified by the Board from time to time. Under clause 10 the Board is empowered to enhance general tariffs and miscellaneous charges from time to time besides reserving the right to enhance the rates chargeable for the supply. It may be noticed from the above, the said agreement relates to the obligation of the Board to supply the quantities agreed to the consumer and to charge for the said supplies. The said agreement does not envisage the requisitioning of additional load or terms of such releases. The release of load requisitioned for initial supply and additional supply is guided by the terms and conditions of supply notified by the Board. The agreement is executed between the parties only after the consumer complies with the terms and conditions of supply notified by the Board in exercise of its powers u/s 49 of the Supply Act. Coming to the nature of the agreement between the consumer, the said contention is no longer res integra. The Supreme Court in Hyderabad Vanaspathi's case (supra), had held:

"Section 49 does not require the Board to enter into a contract with individual consumer."

Even in the absence of an individual contract, the terms and conditions of supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer, that he had no knowledge of the terms and conditions of supply, agreement in writing is entered into with each consumer that will not make the terms purely contractual. Undoubtedly, the terms and conditions are statutory in character and they cannot be said to be purely contractual. The Supreme Court had also rejected the view expressed by the Full Bench of this Court wherein it was held that the terms and conditions of supply are contractual. In para 25 of the judgment, the Supreme Court had categorically held that:

" in our opinion the terms and conditions of supply are statutory in character."

The Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, , had upheld the power of the Board to unilaterally revise the conditions of supply and also upheld the power of the

Board to demand higher additional security for payment of energy bills. When the Board had unilaterally altered the terms and conditions of supply of electricity by directing the existing consumer to change over to higher voltages than they were receiving earlier and imposed an additional charge in the event of failure of the consumer to avail supply at the stipulated voltage, the Supreme Court had upheld the powers of the Board to unilaterally prescribed such a condition with particular reference to clause VI of the schedule to Electricity Act in Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, . Though it was contended before the Supreme Court in the said case that where a consumer has requisitioned supply of power at a particular voltage and the Board has agreed to do, it was not permissible to alter the condition, the Court while rejecting the said contention had held:

"It is clear from a perusal of this provision that the obligation u/s 26 is subject to the provisions of this Act. Clause VI pertaining to requisition for supply to owner and occupiers of the electricity provides for conditions under which a licensee will be bound to supply tinder sub-clause (5) of clause VI of the schedule under 1910 Act requires the requisition to be in a form prescribed and the form prescribed does not indicate that the consumer is free to ask for the supply at a particular voltage only."

19. It is also held that Section 49 clearly authorises the Board to lay down the conditions of supply. Referring to the power reserved to the Board to alter the conditions of supply in the agreement in view of the power u/s 49 of the Supply Act. It was held that the Board has authority to unilaterally alter conditions of supply and hence the contention of the consumer was negated. The Supreme Court in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , had held that though the relationship between the Board and the consumer is contractual but the basis of supply is statutory. Thus from the above legal position emerging from the judgments of the Supreme Court, it is clear that the agreement entered into by the consumer with the Board is a statutory contract and nature of supply is statutory in character. It is open to the Board to lay down terms and conditions of supply and by virtue of clause 5 of the agreement, "the consumer agreed to abide by the terms and conditions of supply and the consumer recognises the power of the Board in clause 10 to vary unilaterally the tariffs, general and miscellaneous charges and the terms and conditions of supply by special or general proceedings. Thus the contention raised by the petitioner is liable to be rejected and is accordingly rejected.

20. It is next urged that the respondent-Board had fixed higher charges towards service line charges and such prescription is confiscatory and penal. In order to appreciate the said contention, it has to be kept in mind that what is charged as service line charges by the Board in BPMS No.1160, dated 3-11-1989 is the cost of pro-rata capital costs as held by me earlier and the petitioner shall have to demonstrate as to how the said charges as fixed by the Board in the said Board proceedings is confiscatory and penal. The petitioner in order to substantiate its

contentions had relied upon the annual accounts published by the Electricity Board to show that the Board had generated surplus in the relevant years and hence it is not entitled to claim such arbitrary sums. It may be noticed from the annual accounts of the Board published for the year 1989-90, the Board had generated a surplus the statutory maximum of 3% as envisaged by Section 59 of the Supply Act. According to the petitioner the sums collected under the impugned proceedings are calculated, then it amounts to excess surplus and thus fixation of charges is unduly penal. It may be noticed that the annual accounts published for the year 1989-90 is in respect of the surplus generated by the Board during the relevant financial year. What would be relevant to consider is not the annual accounts of the particular year in which the collection is made but what is collected from the consumer is in respect of the infrastructure and capital works that are to be undertaken by the Board in the near future also. As already noticed the projects cannot be commissioned overnight. The same cannot be examined with arithmetical precision to arrive at the conclusion whether such fixation is penal or not. In fact, the Supreme Court in Kerala State Electricity Board's case (supra), had categorically held that:

" we are of the view that failure of the Government to specify the surplus which may be generated by the Board cannot prevent the Board from generating a surplus after meeting the expenses required to be met. Perhaps, the quantum of surplus may not exceed what a prudent Public Service Undertaking may be expected to generate without sacrificing the interests, it is accepted to serve and without being obsessed by the pure profit motive of the private entrepreneur. The Board may not allow its character as a public utility undertaking to be changed into - that of a profit motivated private trading or manufacturing house. Neither the tariffs nor the resulting surplus may reach such height as to lead to the inevitable conclusion that the Board had shed its public utility character."

The same principle is reiterated by the Supreme Court in Hindustan Zinc Limited case (supra), that the profit is made not merely for the sake of better discharge of its obligation by the Board and when such a thing had been done, it cannot be said that the public enterprise had acted beyond its authority. While countering the submissions of the petitioner, the learned Counsel appearing for the Board had contended that price fixation is legislative in character and it cannot be interfered into by the Court unless it is shown that the said fixation is arbitrary. In fact, the Supreme Court in the judgments above referred had held that price fixation is legislative in character and cannot be subject-matter of judicial review. The principle is reiterated time and again by the Supreme Court and in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , the Constitution Bench of the Supreme Court had held:

" price fixation is in the nature of a legislative action even when it is based on objective criteria founded on relevant material. No rule of natural justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reason."

In a recent judgment of the Supreme Court in Bihar State Electricity Board and another Vs. M/s. Usha Martin Industries and another, , the question where the Bihar State Electricity Board has fixed the tariff taking into consideration the central excise on electricity payable by it and merged the same in the uniform tariff and later when the excise duty on electricity is abolished and it was contended that the Board shall reduce the price of the uniform tariff. Rejecting the said contention, the Supreme Court held:

" The consideration for the sale of electricity is the price charged by the Board. The sale price would be entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of goods. There is no dispute that the uniform tariff was fixed in conformity with the principles contained in Section 49 of the Act, Along with other costs incurred by it, the Board also took into account the excise duty payable by the Board. It is not the case that the respondent company that the Board was making excessive profit or any profit at all. The excise duty is only one small item for the total expenditure incurred by the Board for generation of electricity. This is no law which requires the Board to reduce the tariff, if any one of the items of expenditure incurred by the Board has being reduced."

21. In view of the law enunciated by the Supreme Court, it is clear that fixation of price is legislative in character and unless it is shown that the said fixation is unreasonable and arbitrary, the Court shall be loath to interfere with the said fixation. The price is fixed by the experts in the field of finance taking over all picture of the Board's finances and the schemes to be implemented by it and the Courts do not have the expertise to microprocess the same. Thus the contention of the petitioner-Company that the fixation of charges under the impugned Board proceedings is confiscatory and penal is liable to be rejected.

22. While assailing the findings of the Electrical Inspector, the learned senior Counsel appearing for the Board contended that the Electrical Inspector erred in entertaining the dispute inspite of the Board's objection that the dispute does not fall within clause VI(3) of the Schedule of Electricity Act as the amount collected do not relate to the cost of service line but the cost of extension though called service line and therefore not fall under service line charges appearing in clause VI. Thus, it is contended that the order dated 30-5-1992 passed by the Electrical Inspector is liable to be set aside. The said order is sought to be sustained both by the Electrical Inspector and also by the petitioner-Company stating that the dispute is within the domain of the Electrical Inspector under clause VI(3) and hence the order cannot be faulted with. It is noticed from clause VI of the schedule, the service line charge referred to therein is the one that may be laid upon the property of the consumer in respect of which requisition is made and so much of service line as may be necessary for the purpose of extending supply beyond 100 feet from the licensee's distributing main. In respect of the above service line, if there is any difference or dispute the Electrical Inspector was empowered to entertain the dispute and decide the matter. Thus the

Electrical Inspector is empowered to decide the dispute only in respect of the cost charged by the Electricity Board from the distributing main to the consumer's premises excluding the first 100 feet. The power does not extend beyond that. The Electrical Inspector cannot embrace and decide upon every thing wherever the word service line appears. The jurisdiction is limited to that portion of the service line commencing from the licensee's distributing main to the consumer premises. When the petitioner-Company raised a dispute before the Electrical Inspector, the Board had specifically pleaded though the word service line charge is used in the Board proceedings, it is in substance nothing but collection of pro rata capital cost incurred by the Board and hence it is not a service line charge. Without considering the aforesaid objection raised by the Board, the Electrical Inspector proceeded to hold that since no modification was necessary in this case for releasing the additional load of 3000 KVA, no additional expenditure was involved and since the dispute relates to the clause styled as service line charges, it falls under clause VI (3) of the Schedule and with the aforesaid reasoning the Electrical Inspector had rejected the contention raised by the Board. In view of what has been held above, the amount being collected towards service line charges is not the actual cost of service line but it is only a pro rata capital cost and conclusions of the Electrical Inspector failed to appreciate the contentions raised by the Board that the impugned proceedings are in exercise of the statutory provisions u/s 49 of the Supply Act and are not traceable to clause VI of the schedule. Apart from it, I find that the Electrical Inspector erroneously concluded the said proceedings are inconsistent with the clause VI of the Schedule. Even the said conclusion is wholly incorrect in view of finding recorded earlier. Thus, now I have no hesitation to hold that the conclusions of the Electrical Inspector are vitiated by failure to notice the power of the Board while issuing the impugned proceedings and there is no consistency between the impugned proceedings and that of clause VI of the Schedule. Thus, the said finding is set aside and it is declared that BPMS No. 1160 (Commercial) dated 3-11 -1989 to the extent stated above is inira vires of the Board's powers and is not inconsistent with clause VI of the Schedule.

23. It is next contended by the learned Counsel that the collection of Rs.20,000/- towards service connection charges is unreasonable and arbitrary. As could be seen from the terms and conditions of supply, the consumer is bound to pay service connection charges for the purpose of releasing the supply and it is not correctable to the services rendered. Further, it is one time payment. The service connection charges is a fixed sum charged by the Board for releasing the supply and it is a condition framed in exercise of the powers u/s 49 and having regard to the quantum it cannot be said that the same is unreasonable and arbitrary.

24. In view of the foregoing, the writ petitions are disposed of as under:

(i) BPMS No.1160 (Commercial), dated 3-11-1989 is intra vires of the powers of the Board and is traceable to Section 49 of the Electricity (Supply) Act, 1948 to the extent it prescribes charges per KVA of requisitioned demand and is not

inconsistent with clause VI of the Schedule.

(ii) That part of BPMS No.1160, dated 3-11-1989 which purports to levy line charges at the fixed rates in addition to per KVA charges is inconsistent with clause VI of the Schedule of the Indian Electricity Act, 1910 and it is hereby declared that the Board is entitled to collect only the actual cost of service line charges incurred by the Board for extending supply to the consumer from its distribution main to the consumer's premises.

(iii) The finding of the Electrical Inspector that BPMS No.1160 (Commercial), dated 3-11-1989 is inconsistent with clause VI is set aside subject to para (ii) above.

(iv) The demand and collection of service connection charges at the rates stipulated by the Board is neither arbitrary nor confiscatory and thereby upheld.

25. Writ petitions are disposed of accordingly with no order as to costs.