

(2001) 04 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 40692 of 2000

L.M.L. Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 254(2)
Criminal Procedure Code, 1973 (CrPC) — Section 195
Electricity (Supply) (Uttar Pradesh Amendment) Act, 1972 — Section 15(6)
Electricity Act, 1910 — Section 2(1)
Electricity Regulatory Commission Act, 1998 — Section 10, 27, 28, 29, 29(6)
Penal Code, 1860 (IPC) — Section 193, 219, 228
Uttar Pradesh Electricity Reforms Act, 1999 — Section 11, 15, 23, 24

Citation : AIR 2001 All 321 : (2001) AWC 1472

Hon'ble Judges : G.P. Mathur, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Somesh Khare and Sunil Gupta, for the Appellant; Ranjit Saxena, Sudhir Agarwal, Ashok Mehta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed for quashing of the 15 per cent surcharge levied on the energy charge in the electricity bill of the petitioner for August, 2000.

2. The petitioner is a company registered under the provisions of Companies Act and is engaged in manufacturing two wheelers [scooters and motor cycles]. The petitioner entered into an agreement with U.P. State Electricity Board (hereinafter referred to as UPSEB] on 31.10.1996 for supply of electrical energy in the form of a three phase alternative current at declared pressure of 132 KV and a power not exceeding 800 KV to its factory at A-1, Pankl Industrial Area, Site-111, Kanpur. The petitioner claims that it is running a non-continuous process industry and has to observe peak hour restriction and, consequently, it does not consume power from 6.00 p.m. to 11.00 p.m. A new tariff was enforced

with effect from 9.8.2000 and in the bill dated 5.9.2000 a surcharge of Rs. 6,33,898.45 was levied on total energy charge of Rs. 42,25,989.58. The petitioner contends that as it is observing peak hour restriction and is not consuming power during the restricted hours, i.e., from 6.00 p.m. to 11.00 p.m., the levy of surcharge @ 15 per cent is illegal as the same can be levied only on a consumer who is not observing peak hour restriction. The plea taken in the counter-affidavit filed by Kanpur Electric Supply Company (hereinafter referred to as KESCO) is that power is being supplied to the petitioner by an independent feeder emanating from 132 KV Navbasta Sub-station and. consequently, under the tariff approved by U.P. Electricity Regulatory Commission, the petitioner is liable to pay 15 per cent surcharge on energy charge. It is further pleaded that this 15 per cent surcharge is not dependent upon observance of peak hour restriction and those who do not observe this restriction and consume power between 6 p.m. and 11 p.m. have to pay an additional amount of 15 per cent surcharge on energy charge.

3. A copy of Electricity Retail Tariff of U.P. Power Corporation Limited (hereinafter referred to as UPPCL) effective from 9.8.2000 has been filed as Annexure 1-A to the writ petition. The petitioner is a consumer of large and heavy power and is governed by rate Schedule HV-2. Since much argument has been raised by the petitioner on its basis, the relevant part thereof is being reproduced below :

Rate Schedule HV-2 ----- Large and Heavy Power 1. Applicability

This rate schedule shall apply to all consumers who have a contracted load of more than 75 Kw (100 BHP) for industrial and/or processing purposes as well as to Arc/Induction Furnances, Roiling/Re-Rolling Mills, Mini Steel Plants and to any other power consumer not covered under the other Rate Schedule. This Rate Schedule shall also apply to commercial light, fan and power consumers (LMV-2) and power consumers of Rate Schedule LMV-6 subject to the condition that they opt for this Rate Schedule.

The contracted demand shall be expressed in whole number only.

2.(omitted as not relevant).

3.....(omitted as not relevant).

4. Rate of charge.

Description

Demand Charge

Energy Charge

A.

Basic Rate (Applicable) to Urban Consumers)

Rs. 130 per KVA/ Month

P 390 Paise/KWH

L

U

S

Notes :

(a) In respect of consumers who opt for power supply during restricted/peak hours an additional surcharge of 15% on the amount billed at the "Rate of Charge" under item 4-A, above, i.e.. Demand Charge and Energy Charge shall be levied.

However, in respect of consumers getting power supply on independent feeders emanating from 400/220/132 KV substations an additional surcharge of 15% on demand and energy charges shall be charged further subject to the condition that these consumers will get an assured supply of minimum 500 hours in a month. In case of shortfall in above guaranteed hours of supply a rebate @ 1% for each 10 hours shortfall, will be admissible on the total amount computed under "Rate of Charge".

(b)[Omitted as not relevant].

(c)(Omitted as not relevant).

(d) In respect of supply during peak hours/restricted hours, the consumer shall have to take the permission from UPPCL.

4. Sri Sunil Gupta, learned counsel for the petitioner has contended that the provision for levy of 15 per cent surcharge on those consumers who are getting power supply from independent feeders emanating from 400/220/132 KV substation is contained in the latter part of Note (a) of para 4 of Rate Schedule HV-2 and, therefore, this provision can become operative only in such cases where earlier part of Note (a) is applicable. The contention is that this provision has, no independent existence and if in a given case the earlier part of Note (a) does not apply on account of necessary conditions for its applicability being not satisfied namely, viz.. the consumer does not opt for power supply during restricted hours, the provision for levy of additional surcharge on account of power supply being made on independent feeders emanating from 400/220/132 KV sub-stations cannot have any application. Learned counsel has elaborated his argument by submitting that this clause starts with the word "however" which introduces a subordinate clause and qualifies the sentence or a clause as a whole. Learned counsel has referred to several dictionaries where the meaning of the word "however" has been given as nevertheless or notwithstanding or yet or still and it is stated that the word is often used to indicate a reservation after something conceded or a decision after consideration of adverse points. It has been urged that for understanding the real import of Note (a) of para 4 of the tariff, the word "however" has to be given some meaning and it cannot be

ignored. Sri Gupta, besides referring to some well known treatises on Interpretation of Statutes by Graes. G.P. Singh, and Jagdish Swaroop has also referred to decisions of the Apex Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, wherein, it was held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusages if they can have appropriate application in circumstances conceivably within the contemplation of the statute and also to The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad Vs. The Registrar of Co-operative Societies and Others, . wherein, it was observed that it is a cardinal principle of construction not to brush aside words used in a statute or in a notification Issued under a statute and full effect must be given to the entire words of an instrument.

5. The petitioner filed an amendment application on 12.1.2001 whereby copies of some circulars issued by U.P. Power Corporation Ltd. on 8.9.2000 and 21.12.2000 for the purpose of implementation of the tariff have been filed as Annexures 1 -B and 1-C to the writ petition. Para 1 of the circular dated 8.9.2000 provides that such consumers who are governed by the tariff L.M.V.-6 and H.V.-2 and use power during restricted hours shall have to pay 15 per cent surcharge, Para 2 provides that such consumers who are governed by Tariff H.V.-2 and are getting power supply from an independent feeder emanating from 400/220/132 KV sub-stations and are having a guaranteed supply of 500 hours in a month shall have to pay 15 per cent surcharge. These consumers shall be ensured 500 hours of supply every month and in case there was a shortfall in supply they would get a rebate of 1 per cent for short supply of every 10 hours in the electricity bill. If the consumers getting supply from such an independent feeder do not want a guaranteed supply of 500 hours in a month then the surcharge of 15 per cent shall not be levied. Such consumers shall have to inform the Executive Engineer by registered post that they do not want to get a guaranteed 500 hours of supply. Those consumers who do not exercise their option would be ensured 500 hours of supply and 15 per cent surcharge shall be levied. If a consumer of this category also opts to get supply during the restricted hours he shall have to pay 15 per cent plus 15 per cent that is 30 per cent surcharge.

6. It is averred in para 6-F of the amendment application that the petitioner by means of a letter dated 16.9.2000 addressed to the Executive Engineer. KESCO, has categorically sent its option stating that it is not opting for guaranteed supply of electricity for 500 hours in a month. Learned counsel for the petitioner has submitted that in view of Circular dated 8.9.2000 issued by the UPPCL, the latter part of Note (a) of para No. 4 of the tariff is not applicable as the petitioner has already complied with the terms of the said circular and has sent registered letter to the Executive Engineer stating that it is not opting for the guaranteed supply of electricity for 500 hours in a month.

7. Sri Ranjit Saxena, learned counsel for KESCO has submitted that the levy of 15 per cent surcharge on consumers getting power supply from independent

feeders emanating from 400/220/132 KV sub-stations is a wholly independent clause and applies on its own force, and, for its applicability it is not dependent on the clause relating to supply during restricted hours. Learned counsel has submitted that those who opt for getting supply during restricted hours will have to pay 15 per cent additional surcharge and this is a wholly independent clause. It is urged that there is a separate class of consumers, who get power supply from independent feeders emanating from 400/220/132 KV sub-stations and they have to pay 15 per cent surcharge. However, this class of consumers have been given a special benefit namely that they will get an assured supply of minimum 500 hours in a month and in case of shortfall in above guaranteed hours of supply, a rebate of 1 per cent for each 10 hours short-fall will be admissible on the total amount computed under Rate of Charge".

8. Before examining the rival contentions raised at the Bar, it is necessary to take notice of sonic statutory provisions which have come into force recently and also the follow up actions taken in pursuance thereof. The Parliament enacted the Electricity Regulatory Commission Act, 1998 (hereinafter referred to as the Central Act) which came into force on July 2, 1998, to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalisation of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto. Section 3 of this Act lays down that the Central Government shall within three months from the date of commencement of the Act establish a body to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and the functions assigned to it under the Act. Chapter III of the Act deals with powers and functions of the Central Commission. Section 13 enumerated the functions which the Central Commission shall perform and one of the function is to regulate the tariff of generating companies. Section 17 provides that the State Government may, if it deems fit, by notification in the Official Gazette, establish, for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission. Chapter V deals with powers and functions of State Commission and Section 22 thereof provides that the State Commission, besides performing several other functions, shall determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be, in the manner provided in Section 29. Section 28 provides that the Central Commission shall determine by regulations the terms and conditions for fixation of tariff under clauses (a) (b) and (c) of Section 13. Section 29 provides that the State Commission shall determine by regulations the terms and conditions for the fixation of tariff. Sub-section (6) of Section 29 provides that the Commission shall secure that the licensees comply with the provisions of their licence regarding the charges for the sale of electricity both wholesale and retail.

9. The U.P. Electricity Regulatory Commission was established u/s 17 of The Electricity Regulatory Commission Act, 1998 (Central Act).

10. Within a year of the enforcement of the Electricity Regulatory Commission Act, 1998, the U.P. Legislature enacted the Uttar Pradesh Electricity Reforms Act, 1999 (U.P. Act No. 24 of 1999) (hereinafter referred to as the Act). This Act has been made with reference to entry 38 which is "Electricity" in the Concurrent List of Seventh Schedule of the Constitution and it received the assent of the President on June 23, 1999 and was published in U.P. Gazette on July 7, 1999. The provisions of U.P. Act shall, therefore, in the event of any repugnancy prevail over the Central Act in view of Article 254(2) of the Constitution. The preamble of the Act shows that it has been enacted to provide for the restructuring of the electricity industry in the State of Uttar Pradesh, the rationalisation of generation, transmission, distribution and supply of electricity in the State, regulation by an independent Electricity Regulatory Commission of the electricity industry in the State including the purchase, distribution and supply, tariff and other charges, etc. and for matters connected and incidental thereto. Section 3 provides that there will be a Commission in the State known as U.P. Electricity Regulatory Commission to exercise the powers conferred on and to perform the function assigned to it under the provisions of this Act. Clause (b) of sub-section (1) of Section 3 provides that the Uttar Pradesh Electricity Regulatory Commission established and constituted u/s 17 of the Central Act shall be the Commission under this Act and the Chairperson and Members thereof shall be deemed to have been appointed as such under this Act. Section 10 enumerates the functions of the Commission and subsection (a) provides for determination of tariff for electricity, wholesale, bulk, grid or retail, as the case may be. Sub-section (g) confers power to Issue licence for transmission, distribution or supply of electricity and sub-section (q) confers power to adjudicate upon the disputes and differences between a licensee and utility or to refer the same for arbitration. Section 11 lays down that the Commission shall, while performing its adjudicatory functions under this Act, have all the powers of a civil court trying a suit in respect of the matters enumerated in this section. Section 13 provides that for the purposes of procurement, transmission and supply of electricity, a Company by the name of the Uttar Pradesh Power Corporation Limited shall be formed and registered under the Companies Act, 1956 as soon as may be, after the commencement of this Act, by the State Government. Section 15 provides that the Commission may on an application made, grant a licence authorising any person for transmission or supply of electricity. Sub-section (4) of this section lays down that the licence may prescribe the terms and conditions under which the transmission or supply of electricity is to be made and contain such other conditions as the Commission may consider appropriate for achieving the objects of the Act. Clause (i) of sub-section (5) of Section 15 provides that the condition of the licence may require the licensee to establish a tariff or to calculate its charges from time to time in accordance with the directions of the Commission. Section 18 gives power to the Commission to revoke a licence. Chapter VII deals with tariff and Section 24 therein provides that the licensee shall follow the procedure specified in the regulations in determining tariffs. Sub-section (4) of this section casts a duty on a licensee to provide to the Commission

full details of its calculation for the ensuing financial year of the expected revenue from charges which it believes to have been permitted to recover and also to publish within three days of submission of its proposal of tariff for the ensuing year a notice in at least two daily newspapers. Under subsection (5), the Commission is required within ninety days from the date on which the licensee has furnished the information under subsection (4) to give notice to the licensee that it accepts the licensee's calculation or that it does not consider the licensee's calculation to be in accordance with the procedure given in licence or that it is otherwise incorrect specifying the reasons therefore and proposing modifications or alternative calculations. Subsection (6) empowers the Commission to determine whether the tariff charged by the licensee is required to be modified and if so, require the licensee to modify the tariff or any part (hereof. Sub-section (8) of Section 24 provides that the licensee shall not implement any tariff unless it has been approved by the Commission. Section 30 confers power on the Commission to make regulations. Section 52 provides that the Commission may make regulations not inconsistent with the Act or the rules and sub-section (2) enumerates the matter on which the regulations may be made. Clause (f) of sub-section (2) empowers the Commission to make regulations dealing with the terms and conditions and the procedure for determination of revenues and tariffs.

11. In exercise of power conferred by sub-section (4) of Section 9 and sub-section ID of Section 52 of the Act, the U.P. Electricity Regulatory Commission made regulations which were notified in U.P. Gazette on 6th March, 2000. Chapter IV of the Regulation deals with LICENCE. Regulation 7 provides that the Commission may, if considered appropriate, advertise in newspapers or otherwise notify in such other appropriate manner as the Commission may decide inviting applications for grant of licence for Transmission or Supply of Electricity. Chapter VI deals with TARIFF. Regulation 121 provides that methodologies and procedures for calculating the expected revenue from charges, and for determining the tariffs, may be provided by the Commission from time to time. Regulation 123 provides that the Commission may issue orders from time to time giving details of the manner In which the licensee's revenue and tariff will be determined. It also enumerates the factors which the Commission may keep in view while determining the tariff. Regulation 128 casts an obligation on the licensee to publish the tariff approved by the Commission and it further provides that the tariff so published shall become the notified tariff applicable in the area of supply.

12. In exercise of power conferred by sub-section (1) of Section 23 of the Act (U.P. Act No. 24 of 1999), the Governor of U.P. made a transfer scheme which is called the Uttar Pradesh Electricity Reforms Transfer Scheme, 2000, which was published in Gazette on 14.1.2000. Under this scheme, all the properties, and all Interests, rights and liabilities of UPSEB were vested in the State Government which in turn revested them in the Power Corporation and in generating companies. In exercise of power vested in it u/s 28 of the Indian Electricity Act,

1910, the Government of U.P. granted sanction to Kanpur Electricity Supply Company Limited (KESCO) on 13.1.2000 to engage in the business of distribution and retail supply of electrical energy to the public in the Kanpur Electricity Supply Administration (KESA) Zone. Para 3 of the scheme provides that the sanction will become effective on the day when the distribution undertaking pertaining to KESA Zone consisting of distribution system, distribution assets, specified liabilities and specified personnel are effectively transferred from UPSEB and vested in KESCO. Paragraph 4 lays down that the scheme shall be valid and effective from the date aforesaid till the grant of regular licence by U.P. Electricity Regulatory Commission. Paragraph 5 lays down that KESCO shall forthwith file an application to the Commission for grant of licence. Paragraph 13 lays down that the KESCO shall be entitled to charge the consumers the tariffs in the KESA area as oft the effective date of the sanction. Paragraph 15 is important and it is being reproduced below :

"KESCO shall function under the regulatory control of the Commission as if it is a licensee for the said purpose. It shall be a condition of this sanction that the Commission shall be entitled to issue from time to time directions, orders and regulation in regard to the performance of KESCO concerning the distribution and retail supply of electrical energy in the KESA Zone. KESCO shall comply with all such directions, orders and regulations of the Commission."

13. The U.P. Power Corporation Limited (UPPCL) filed a petition before the U.P. Electricity Regulatory Commission for determination of tariff which was registered as UPPCL Petition No. 1 of 1999/2000. Petitions were also filed by NOIDA Power Company (NPCL) and KESCO, which were registered as petition Nos. 2 and 8 of 2000. After following the procedure prescribed in the Act and the Regulation, the Commission finally determined the tariff by its Order dated 27.7.2000. The entire Order of the Commission which exhaustively deals with the case of the licensees, consumers and others has been placed before us by the learned counsel for the petitioner. Para 7.13 of the order reads as under:

"The changes in the tariff schedule are as follows. This amended schedule shall apply to UPPCL, KESCO and NPCL."

The relevant part of the order Rule Schedule HV-2 dealing with large and heavy power is being reproduced below in exactly the same manner as it is contained in the order :

Rule Schedule HV-2 ----- Large and Heavy Power This rate schedule applies to all consumers who have contracted load of more than 75 KW (100 BHP) for industrial purposes and/or processing purposes as well as to Arc/induction Furnaces. Rolling/Re -Rolling Mills, Mini Steel Plants and to any other power consumers not covered under any other rate schedule.

This rate schedule shall also apply to commercial light, fan and power consumers and consumers covered under Rate Schedules LMV-2 and LMV-6. subject to condition that they opt for this Rate Schedule (HV-2) and arrange the MDI/

electronic metering equipment themselves.

The current (ariff for the category consists of demand charge of 125 per KWH per month plus energy of Rs. 3.70 per KWH. The Commission appreciates the fact that the electricity rates for industry in this State are quite high and a sharp increase in the rates will be counter productive. The number of industrial units setting up their own captive power plants is increasing and this trend needs to be arrested. We are, therefore, increasing the demand and energy charges only by 5%..

A special rate for seasonal industries has been introduced. To ensure availability of power to industries connected to independent feeders emanating from 132 KV, 220 KV, and 400 KV sub-stations, they shall be allowed to operate during the peak hours as well. They will be able to do so by paying small additional charge of 15% of the amount of bill in a month. These consumers will be ensured minimum 500 hours supply. In case of shortfall in the guaranteed hours of supply a rebate of 1% per 10 hours or part thereof shall be admissible on the total amount of the bill.

Fixed charges Rs. Per KVA per month and energy charges Paise per unit :

UPERC

As Approved

Demand Charge

130

Plus

Energy Charge

390

For consumers getting power supply in restricted hours

15% surcharge on demand and energy charges

For consumers getting power supply on Independent feeders emanating from 400/220/132 KV.

15% surcharge on demand and energy charges and have the assured month. In case of shortfall In the guaranteed hours of the supply, a rebate at the rate of 1% per ten hours or part thereof shall be admissible under rate of charge.

* in case where demand is recorded in KW, the demand charge shall be computed assuming the power factor as 0.85.

* For connection in rural area getting power supply as per rural schedule a rebate of 10% on the amount of demand charge and energy charge will be given.

* in respect of the supply during peak hours/ restricted hours, the consumer

shall have to take the permission from UPPCL with the intimation to the Commission.

14. It may be noted that the charges mentioned in the box shown above are the charges as approved by the Commission. Besides demand charge and energy charge, there are two separate and distinct clauses. One clause is that consumers getting power supply in unrestricted hours will be liable to pay 15 per cent surcharge on demand and energy charges. The second clause is that consumers "getting" power supply on independent feeders emanating from 400/220/132 KV sub-stations will have to pay 15 per cent surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. In case of shortfall in the guaranteed hours of the supply, a rebate @ 1 per cent per 10 hours or part thereof shall be admissible on the total amount as computed under "Rate of Charge". The third condition mentioned below the box provides that in respect of supply during peak hours/restricted hours, the consumer shall have to take the permission from UPPCL with the intimation to the Commission.

15. There is absolutely no ambiguity or confusion of any kind in the tariff as approved by the Commission. It clearly contemplates two categories of consumers. One category is of consumers who get power supply in restricted hours and the other category is of consumers, who get power supply on independent feeders emanating from 400/220/132 KV sub-stations. The two categories are wholly independent and distinct and they are not inter-linked with each other. The third condition mentioned at the bottom of the box clearly shows that a consumer cannot get power supply in restricted hours as a matter of right and he shall have to take permission from UPPCL with intimation to the Commission. It follows that if a consumer does not apply for permission from UPPCL and such a permission is not granted he shall not get power supply in restricted hours and he will not be required to pay 15 per cent surcharge. However, so far as consumers getting power supply on independent feeders emanating from 400/220/132 KV substations are concerned, they have to pay 15 per cent surcharge, on demand and energy charges. This levy of 15 per cent surcharge is dependent only upon the fact that the consumer is getting power supply on an independent feeder emanating from 400/220/132 KV sub-stations and it is not dependent upon getting power supply in restricted hours. It is also noteworthy that for such category of consumer, there is no provision for making any option to the effect that he does not want an assured supply of 500 hours in a month. The only benefit provided to him in the tariff is that he is assured of supply of minimum 500 hours in a month and in case of shortfall in the guaranteed hours of the supply, a rebate @ 1 per cent per 10 hours or part thereof shall be admissible on the total amount computed under "Rate of Charge".

16. We will now refer to the provisions of the Act which clearly show that it is the U.P. Electricity Regulatory Commission which has to determine the tariff and the tariff so determined is absolutely binding on the licensee as well as on the

consumer and it is not permissible for anyone else to alter or vary the same. Section 15(1) provides that the Commission may on an application made, grant a licence authorising any person for transmission or supply of electricity. Section 15(4) provides that the licence may prescribe the terms and conditions under which the transmission or supply of electricity is to be made. Section 15(5)(i) lays down that the conditions of the licence may require the licensee to establish a tariff or to calculate its charges from time to time in accordance with the directions of the Commission. Section 18(2)(b) provides that the Commission may revoke a licence on the ground that the licensee has committed breach of any of the terms and conditions of the licence, the breach of which is expressly declared by the licence to render it liable to revocation. Section 24(6) provides that the Commission may determine whether the tariff charged by the licensee is required to be modified, and if so, require the licensee to modify the tariff or any part thereof with immediate effect. Section 24(8) provides that if the Commission considers that the tariff of a licensee does not fulfil the requirements of sub-section (7) it shall provide the licensee an alternative tariff after consultation with Electricity Advisory Committee which shall be implemented by the licensee. The last part of this subsection is important and it lays down in no uncertain terms that the licensee shall not implement any tariff unless it has been approved by the Commission. Section 27 empowers the Commission to enforce every direction or order made by it as if it were a decree or order made by a civil court and the Commission has all the powers to execute it. Section 28 empowers the Commission to impose fines and charges if any of the directions or orders, made by it, is contravened by a licensee. Section 37 provides that whoever refuses or fails without reasonable cause to comply with, or give effect to, any direction, order or requirement made under this Act shall be guilty of an offence which is punishable with imprisonment upto one year or a fine upto Rs. 5 lakhs. Section 48 provides "that no order or proceeding made under this Act shall be appealable except as provided in the Act and no civil court shall have jurisdiction in respect of any matter which the Commission or any other authority is empowered by the Act to decide. Section 50 provides that proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. In exercise of power conferred by Section 52 of the Act, the Commission has framed Regulations and Regulation 128 reads as under :

128. (1) The licensee shall publish the tariff or tariffs approved by the Commission in the newspapers having circulation in the area of supply as provided in sub-section (7) of Section 24 of the Act. The publication shall, besides other things as the Commission may require, include a general description of the tariff amendment and its effect on the clauses of the consumer.

(2) The tariffs so published under (1) above shall become the notified tariffs

applicable in the area of supply and shall come into force after seven days from the last date of such publication of the tariffs, and shall be in force until any amendment to the tariff is approved by the Commission and published."

18. The provisions referred to above show that the Commission alone has got the power to issue a licence for supply or transmission of power and while granting a licence it can prescribe the terms and conditions including that of establishing a tariff under which the supply or transmission is to be made. In case of breach of any condition of licence the Commission can revoke the same. The Commission has power to examine whether the tariff charged by a licensee is proper or not and it can issue directions for modification thereof. The licensee cannot implement any tariff unless it has been approved by the Commission. Thus, the provisions of the Act and the Regulations framed thereunder show in unmistakable terms that it is a tariff as approved by the Commission which is final and binding and it is not permissible for the licensee, consumer or anyone else to vary or alter the same.

19. The Electricity Regulatory Commissions Act, 1998 (Central Act) contains almost similar provisions and there is no repugnancy with the U.P. Electricity Reforms Act, 1999. Section 22 of the Central Act lays down that one of the functions of the State Commission is to issue licences for distribution or supply of electricity and determine the conditions to be included in the licences. Another important function is to determine the tariff for electricity wholesale, bulk, grid or retail. Section 29 lays down that the tariff shall be determined by the State Commission in accordance with the provisions of Central Act and it shall determine by regulations the terms and conditions for fixation of tariff. Here also the power to determine the tariff is exclusively with the State Commission and a licensee has no authority to vary or alter the tariff so determined.

20. There is good logic for conferment of such a power on the Commission. Hitherto the supply of electricity was being made by only one body, viz. UPSEB which being an instrumentality of State and functioning under the control of the Government was not expected to enhance the tariff in an arbitrary manner. In fact, the UPSEB and many Electricity Boards of other States were running on huge losses. The Central Act and the U.P. Act have been enacted to enhance generation of electricity and improve efficiency by bringing in private operators. If a licensee, after getting the licence for a particular area increases the tariff, the consumers will have no option but to pay the same. In order to guard against such an eventuality, provision has been made that while granting a licence the Commission may impose conditions and further no tariff can be implemented unless the same has been approved by it.

21. Since the tariff approved by the Commission will govern the situation and that alone has to be looked into, it is not necessary to examine the contention of learned counsel for the petitioner noticed earlier, which is based upon the latter part of Note (a) beginning with the words "however" of Para 4 of the tariff, copy of which has been filed as Annexure I-A to the writ petition. This tariff has been

published by U.P. Rajya Vidyut Parishad Lekha Sangh, which is an association of Accountants of UPSEB. Sri Sudhir Agrawal, learned counsel for UPPCL has informed the Court that this document is meant for internal circulation and has been published for the guidance of the personnel of the Accounts Department. It does not appear to be an official publication of tariff by U.P. Power Corporation nor it is a publication as required by subsection (7) of Section 24 of the Act.

22. The contention raised on the basis of circular dated 8.9.2000 issued from the office of Chief General Manager (Commercial), UPPCL. is equally untenable. The provision in later part of paragraph 2 Ka thereof which lays down that 15 per cent surcharge would not be levied in case a consumer getting supply from an independent feeder emanating from 400/220/132 KV substation gave an option that he did not want a guarantee of 500 hours of supply in a month, is contrary to the tariff approved by the Commission. The Commission in its order approving the tariff had merely provided that in case of shortfall in 500 hours of assured supply in a month, a rebate of 1 per cent for each 10 hours shortfall will be admissible on the total amount computed under "Rule of Charge". The circular while retaining this provision has made an additional provision to the effect that if such type of consumer gave an option that he did not want an assured supply of minimum 500 hours in a month, the 15 per cent surcharge shall be not levied. This is a clear alteration of the approved tariff which is not permissible in law. Sri Sudhir Agrawal, learned counsel for UPPCL tried to justify the circular by submitting that after a tariff has been approved by the Commission under sub-section (6) of Section 24, the holder of a supply licence, while publishing the tariff in the newspapers as required by subsection (7) of Section 24. could alter the same and the only embargo is that the tariff implemented by the licensee should satisfy the requirements of clauses (a), (b) and (c) of sub-section (7). In our opinion, the contention raised is wholly fallacious. The scheme of the Act which we have referred to in detail clearly shows that a tariff approved by the Commission alone can be implemented by a licensee and it has no power to alter or vary the same. The circular of UPPCL in so far as it is inconsistent with the tariff approved by the Commission is void and wholly inoperative in law. The petitioner, therefore, cannot get any advantage by exercising an option in terms of the circular by which it informed by registered post that it did not want an assured supply of 500 hours in a month.

23. Sri Sunil Gupta also referred to various paragraphs of the order passed by the U.P. Electricity Regulatory Commission on 27.7.2000 and urged on its basis that for consumers getting supply from an independent feeder emanating from 400/220/132 KV sub-station 15 per cent surcharge can be levied only if they exercise an option for getting supply during the restricted hours. He particularly drew attention of the court to the second sentence in the paragraph just above the box which has been quoted earlier and urged on its basis that no other inference is possible from the language used. We are afraid that acceptance of such a contention would lead to uncertainty and weird results. The approved tariff as shown in the box mentioned a rebate of 1 per cent on the total amount

as computed under "Rate of Charge". However, the last sentence of the paragraph relied upon by the learned counsel mentions the rebate of 1 per cent on the "total amount of the bill". The "amount of bill" is different from "rate of charge" as the former contains certain other items like electricity duty, late payment surcharge, etc. besides rate of charge. The electricity duty being in the nature of a tax imposed under the U.P. Electricity (Duty) Act. 1952, the Electricity Regulatory Commission has no power or authority to grant any kind of rebate in the same. In our opinion, the only thing which is to be seen is the tariff which has been finally approved by the Commission and not the reasoning or discussion made in the body of the order.

24. Sri Gupta next urged that the petitioner is not getting supply from an independent feeder which may have been specially constructed and is being used exclusively for the petitioner and, as such, it is not liable to pay 15 per cent surcharge. It is important to mention that in the writ petition, as it was originally filed on 11.9.2000. the plea taken in paragraphs 7. 25 and 27 was that the petitioner company had at no point of time opted for the electricity to be supplied by means of an independent feeder nor it ever asked for lying down any independent feeder line. In para 9, it was pleaded that the petitioner is not being supplied electricity by an independent feeder line. In the counter-affidavit filed on 13.8.2000 on behalf of KESCO, the plea raised in the aforementioned paragraphs of the writ petition was denied and it was asserted that the petitioner himself made a request for supply being made by an independent feeder line, which was accepted by the Chairman of UPSEB and sanction was granted. Thereafter an estimate of Rs. 1.98,87,984 was prepared and the said amount was deposited by the petitioner and a supply line of 7.718 Km. plus 0.589 Km. was constructed. The document relating to the sanction of the load, estimate of the cost of construction, the various letters sent by petitioner in this regard, the diagram for the proposed construction of line have been filed as Annexure CA-1 to CA-6 to the counter-affidavit. In fact in a letter dated 24.2.1995 sent by the petitioner to General Manager of KESA (Annexure-CA-2). it is written in the very first paragraph that UPSEB Transmission Division-11, Is constructing 132 KV bay at Navbasta sub-station and 132 KV line up to their plant. In the letter dated 9.11.1995 sent by the petitioner (Annexure CA-4). it is mentioned that it had already deposited two cheques of rupees seventy-five lakhs each and the balance amount is to be paid by December, 1995. These documents clearly show that the petitioner came out with an absolutely false case that it had never opted and had never asked for supply being made by an independent feeder line. Faced with this situation the petitioner filed an amendment application on 12.1.2001. wherein, a plea has been taken that no independent feeder line emanating from 400/220/132 KV sub-station has been constructed up to the factory premises of the petitioner situated at C-10 Panki industrial Estate. Kanpur. It is pleaded in sub-para (b) of para 6-M that one 132 KV double circuit line, which was at a distance of 540 metres from the factory, was already existing as a stand by 132 KV source to Navbasta sub-station from Panki Grid Station. The petitioner made

a request that this existing double circuit line be used to feed 132 KV power to the petitioner and in doing so. only 4-5 towers had to be erected. However, the suggestion of the petitioner was not accepted and it received a communication dated 30.6.1995 whereby it was asked to deposit the estimated amount of Rs. 1.98.97.984 for construction of 132 KV supply line. As the petitioner was in dire need of power it deposited the amount by 20.7.1996 but the supply was made from the already existing 132 KV Navbasta Panki Circuit No. 1 by tapping the same. It is pleaded in para 6-V that 7.718 Km length of old line and newly constructed 0.6 Km line was Jointly used to give 132 KV connection for the petitioner. In para 3 of the amendment application, it was prayed that the word "opted" existing in para 7 and 25 of the writ petition be deleted and substituted by the word "applied" and some amendment was sought in para 27 also.

25. In the tariff approved by the Commission, the language used is "for consumers getting power supply on independent feeders emanating from 400/220/132 KV". What is to be seen is whether the petitioner is a consumer of the type mentioned in this clause. The word "independent feeder" has not been defined in the tariff and the learned counsel for the parties have placed reliance on the dictionary meaning of the word. "independent" means not depending or contingent upon something else for existence, operation etc. ; not relying on another or others for aid or support. The meaning of the word "feeder" in the context in which it is used here is--a conductor or group of conductors connecting primary equipment in an electric power system. Sri Sudhir Agrawal, learned counsel for UPPCL has referred to Sections 2(1) of Indian Electricity Act, 1910. which define a distributing main and service-line. He also referred to proviso (b) of sub-clause (1) and sub-clause (2) of clause VI of the Schedule of the same Act and has submitted that any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid by the person making the requisition be maintained by the licensee who shall also have the right to use it for the supply of energy to any other person. Learned counsel has submitted that under the provisions of Indian Electricity Act, 1910, which are saved and are still operative by virtue of Section 15 (6) of the U.P. Electricity Reforms Act, 1999, even though the line may have been constructed at the cost of the petitioner, the licensee has the right to use the said line for supply of energy to any other person. Learned counsel for the " respondent has submitted that the domestic supply is of 220 Volts, an ordinary industrial power is of 440 Volts and that used in railway traction is 11,000 Volts, but the petitioner is getting supply of a very special type which is of 1.32.000 Volts and there are very few consumers getting power of such high voltage. It is stated in para 11 of the counter-affidavit that the petitioner has been given supply by an independent 132 KV supply line from Navbasta sub-station and there is no tapping in between. One Important fact mentioned in this para is that energy consumption shown in the meter installed at the Navbasta sub-station and the energy consumption shown in the meter installed at the petitioner's factory tallies within the permissible limits of Indian

Electricity Rules. A copy of monthly readings and the power consumption from January to August. 2000 has been filed as Annexure CA-5 to the counter-affidavit. The last two columns of this document mentioned the units supplied at Navbasta substation and billed at consumer (petitioner) end and they almost tally with each other. This is a conclusive proof of the fact that the entire quantum of electricity supply emanating from Navbasta sub-station is being received by the petitioner. Had there been any lapping in between or any other consumer was getting supply from the same feeder line, the quantum of electricity supply received by the petitioner would have been much less and would not have tallied with the supply emanating from Navbasta sub-station. In view of this clinching evidence, there cannot be even a slightest doubt that the petitioner is getting supply from an independent feeder line emanating from 132 KV sub-station. The petitioner is, therefore, fully covered by the relevant part of the tariff and is liable to pay 15 per cent surcharge.

26. Before parting with the case, it may be mentioned here that a Division Bench passed a stay order on 11.9.2000 staying the realisation of the disputed 15 per cent surcharge amount and this order was extended from time to time. On the principle that act of court will prejudice no one, the Court can award interest where payment of dues was stayed even though no such condition was imposed in the said order. See *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, ; *M/s. Sohan Lal & Co. v. Lt. Governor* AIR 1991 SC 1952 and *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, However, since the respondents have a provision for late payment surcharge. It is not necessary for us to award interest.

27. For the reasons discussed above, we find no merit in this writ petition which is hereby dismissed with costs.