
(2003) 08 AHC CK 0209
In the Allahabad High Court
Case No : C.M.W.P. No. 11225 of 2003

Prachi Leathers (P.) Ltd. and Another	APPELLANT
Vs	
U.P.P.C.L. and Others	RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Regulations, 1984 — Rule 23(2)
Electricity Act, 1910 — Section 22, 22B
Electricity Regulatory Commission Act, 1998 — Section 17
Electricity Regulatory Commission Regulations, 1998 — Regulation 5(3)
Uttar Pradesh Electricity Reforms Act, 1999 — Section 21, 24, 28, 41, 55
Uttar Pradesh Electricity Supply Code, 2002 — Section 10

Citation : (2003) 6 AWC 5665

Hon'ble Judges : R.S. Tripathi, J; M. Katju, J

Bench : Division Bench

Advocate : S. Agarwal, for the Appellant; V. Mishra, Nand Lal and S.C, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.-

1. Heard learned Counsel for the Petitioner and Shri Vinod Mishra for Respondents.

2. This writ petition has been filed for a writ of certiorari to quash the impugned bills dated 23.3.2002 and 25.1.2002 Annexures-4 and 5 to the writ petition and for a mandamus declaring Clause 4 (d) of HV2 Rate Schedule of the notification dated 1.9.2001 (vide Annexure-3 to the writ petition) illegal and ultra vires Section 24 of the U.P. Electricity Reforms Act, 1999 read with Section 22B of the Indian Electricity Act, 1910. The Petitioners has also prayed for a declaration of the tariff order dated 1.9.2001 of Respondent No. 4 the U.P. Electricity Regulatory Commission as illegal and ultra vires Section 21 of the U.P. Electricity Reforms Act read with Section 22 of the Indian Electricity Act, 1910 to the extent

it imposes penalty of Rs. 75 per KVA for the number of occurrence of the default. The Petitioner has also prayed for a mandamus restraining the Respondents from charging any penalty in pursuance to the impugned bills Annexures-4 and 5 to the petition.

3. The Petitioner No. 1 is a private limited company registered under the Indian Companies Act, which is engaged in the business of manufacture of leather goods. The Petitioner No. 2 is a Director of the company. The industrial unit of the company is set up at Jainpur Industrial Estate, Akbarpur, Kanpur Dehat.

4. It is alleged in para 3 of the petition that the Petitioner No. 1 for the purposes of the aforesaid unit obtained an electricity connection of 400 KVA from the erstwhile U.P. State Electricity Board (U.P.S.E.B). The electrical load was sanctioned vide office memorandum dated 8.5.1995 and the electric connection was released after completion of all formalities and execution of the agreement by installing a Meter on 24.4.1996. The contracted load of the Petitioner was increased to 500 KVA in July, 2000. In para 5 of the petition it is stated that it has paid regular monthly bills in accordance with the tariff applicable to the Petitioner from time to time.

5. In para 6 it is stated that under the agreement the Respondents are liable to supply electricity to the Petitioners continuously except for certain reasons beyond the control of the Respondents which include orders, if any, issued by the State Government imposing restriction in respect of user of electricity during any particular point of time. It is alleged in para 7 of the petition that the aforesaid agreement does not permit the U.P.S.E.B./U.P.P.C.L. to restrain the consumer from user of electricity regularly during certain hours or certain period or otherwise. For the said purpose the agreement refers to only directions or orders issued by the State Government. In para 9 it is stated that due to shortage of electricity in the State of U.P., distribution, consumption and use of electrical energy in the State has been regulated by the State Government under the statutory provisions. Section 22B of the Indian Electricity Act, 1910 as amended in U.P. confers power upon the State Government to maintain supply and secure equitable distribution of energy by issuing general or special orders in the Official Gazette regulating supply, distribution consumption or use of electrical energy. In exercise of the power u/s 22B of the 1910 Act, the State Government issued a notification dated 19.9.1977 published in the Official Gazette called the U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) Order, 1977 (hereinafter referred to as 1977 Order). True copy of the same is Annexure-1 to the petition. A perusal of Clause 8 (a) of the 1977 Order shows that a restriction was imposed for user of electricity by certain categories of industries in the evening, hours, i.e., from 6.00 p.m. to 10.00 p.m. The said restriction was imposed upon non-continuous process industries and is commonly known as "Peak hour restriction". Clause 9 also imposes penalty if any party violates any provision of the said Order. This clause has undergone amendment from time to time and the last amendment, which has continued thereafter was introduced in

the year 1984 vide Annexure-2 to the petition.

6. It is alleged in para 13 of the petition that the U.P. Power Corporation Ltd. (U.P.P.C.L.) is bound to supply electricity to the Petitioner without any restriction except what has been contemplated under the agreement, and has no power at all of its own to impose restriction in user of electricity on regular basis and to make charge for the said purpose. It is alleged that to the best of knowledge of the Petitioner neither the U.P. Electricity Regulatory Commission (hereinafter referred to as U.P. E. R. C.) nor the U.P.P.C.L. has imposed any restriction on any consumer including the Petitioner restraining user of electricity during any particular period or particular hours till date, and hence the entire exercise for imposing the penalty is wholly illegal.

7. It may be mentioned that the State Legislature enacted the U.P. Electricity Reforms Act, 1999 and by virtue of Section 23 thereof the property, rights and liabilities of the erstwhile U.P.S.E.B. got transferred to the U.P.P.C.L. in respect of the transmission and distribution of electrical energy in the State of U.P.

8. Section 24 provides a method for determination of the tariff applicable to the consumers, which is to be realised by the licensee for the supply of electrical energy to its consumers. Under the tariff framed u/s 49 of Electricity (Supply) Act, 1948 the Petitioner was governed by the rate scheduled applicable to HV-2 non continuous process. It is alleged in para 20 of the petition that the 1977 Order as amended from time to time by the State Government is still holding the field. The U.P. Electricity Supply Code, 2002 provides for supply of electricity without any interruption by the licensee except under the conditions prescribed under sub-para (a), (b) and (c) which are quoted in para 21 of the petition. In para 23 of the petition it is alleged that in order to revise and determine the Tariff in the year 2001-2002 the Respondent No. 1 prepared its proposal of Tariff revision and submitted it to the U.P.E.R.C. u/s 24(4)(a) of the Reforms Act, 1999. The said proposal did not contain any provision for imposing penalty for violation of peak hours restriction by a consumer since it was well known to Respondent No. 1 that such power can be exercised only by the State Government. The Respondent No. 1 also published its proposal for the Tariff for 2001-2002 in the newspaper and the said publication also did not contain any provision regarding imposition of any penalty in violation of peak hours restrictions. However, the Respondent No. 4 by its order dated 1.9.2001 purported to have been passed under Sub-section (6) of Section 24 inserted certain changes in the proposal of Respondent No. 1 and under para 7.134 pertaining to seasonal industries, it added the provision for penalty of Rs. 75 per KVA for the contracted load for number of occurrence of default. It is alleged in para 26 of the petition that the Respondent No. 1 had no authority to make any change or alterations in the order passed by the Commission approving the Tariff. The Respondent No. 1 has approved the Tariff for the year 2001-2002 and while publishing the Tariff notification 1.9.2001 as contemplated under Sub-section (7) of Section 24, the Respondent No. 1 separated peak hours penalty clause from

the paragraph pertaining to seasonal industries and added in para 4 dealing with the rate of charge. It is alleged in para 27 of the petition that since the order of the Commission was never conveyed to the consumers in general, the Petitioner had no occasion to notice the aforesaid changes and hence could not challenge the same. In para 29, it is stated that to the utter surprise of the Petitioner the Respondent No. 2 collectively issued four bills to the Petitioner imposing peak hours penalty alleging that the Petitioner has violated peak hours restriction during the period April/May, 2001 and November and December, 2001 vide Annexures-4, 5, 6 and 7 to the petition. The details are in para 29 of the petition.

9. It is alleged in para 31 that while issuing the impugned penalty bills for the alleged peak hours restriction the Respondent No. 2 neither issued any show cause notice to the Petitioner nor the material on the basis whereof impugned penalty was imposed upon the Petitioner was supplied and the aforesaid penalty was imposed in utter violation of the principles of natural justice and without disclosing the material to the Petitioner. By letter dated 30.1.2002 the Petitioner requested Respondent No. 2 to supply copy of M.R.I. (Magnetic Resonance Images) on the basis of which the impugned bills issued. True copy of the same is Annexure-5. However, the Respondent No. 2 did not furnish copy of the M.R.I. report and on the other hand subsequently sent bills dated 20.2.2002. The Petitioner then wrote a letter dated 7.2.2002 to the Deputy General Manager, U.P.P.C.L. requesting him to issue necessary directions for supply of M.R.I. report to the Petitioner. True copy of the said letter is Annexure-9. It is alleged that in order to avoid any further complication the Petitioner submitted a letter to the Respondent No. 2 for granting permission to use electricity as "continuous process". The Respondent No. 2 issued office memorandum dated 7.2.2002 permitting the Petitioner to use electricity as continuous process with effect from 1.2.2002. It is alleged in para 35 of the petition that the Respondents did not furnish copy of the M.R.I. report to the Petitioner but permitted the Petitioner to peruse the same in its office. After perusing the M.R.I. report the Petitioner noted that M.R.I. report of the period April, 2001 shows that maximum demand raised by the Petitioner is 120 KVA. However, the regular monthly bill which was issued to the Petitioner for the consumption month of April 2002, showed the maximum demand of the Petitioner was 424 KVA and the bill was issued accordingly. Thus either the bill dated 2.5.2002 issued for the month of April, 2002 was fictitious showing maximum demand as 424 KVA or the M.R.I. report on the basis whereof peak hours restriction for the period of April, 2001 was issued was erroneous and did not pertain to the Petitioner as it shows maximum demand as 120 KVA as the Petitioner's contracted load is 500 KVA. Further the said M.R.I. report shows that it was obtained on 10.5.2001 although on the said date no M.R.I. was recorded at the Petitioner's premises. Consequently the Petitioner submitted a letter dated 11.2.2002 before the Deputy General Manager, Electricity Distribution Circle, U.P.P.C.L., Kanpur, requesting it to look in to the matter and cancel the peak hour penalty bills, issued for the alleged violation of peak hour restrictions. The Respondent No. 5 did not take any action on the aforesaid letter of the Petitioner

and in the meantime Respondent No. 2 pressurised the Petitioner to pay the aforesaid peak hour penalty bills, else electric supply of the Petitioner would be disconnected. In the circumstances the Petitioner approached Respondent No. 3 by representation dated 21.2.2002 wherein it was pointed out that peak hour penalty bills dated 2.2.2002 issued for the month of April and May, 2001 were wholly fictitious as they did not pertain to the Petitioner and hence they were wholly illegal and are liable to be cancelled. True copy of the letter dated 21.2.2002 is Annexure-11. The Petitioner subsequently submitted additional representation dated 3.6.2002 pointing out that the provisions of peak hours penalty provided in the Tariff Order and notification issued by the Respondents are wholly illegal and contrary to the Government notification issued u/s 22B of the Indian Electricity Act, 1910. In para 41 it is alleged that Respondent No. 2 insisted upon the Petitioner in the second week of February, 2003 to clear the peak hours penalty bills dated 23.1.2002 and 25.1.2002 otherwise electric connection of the Petitioner would be disconnected. Hence the Petitioner again submitted letter dated 26.2.2003 to the Respondent No. 3 requesting him to issue instructions for not taking any penal action against the Petitioner till formal decision is taken vide letter dated 26.2.2003, Annexure-13 to the petition. In para 44 of the petition the Petitioner has disclosed the manner and procedure for preparation of M.R.I. print out by the Respondent Nos. 1 and 2. It is alleged in para 44 that the M.R.I. print out on the basis of which the impugned bills have been issued, have been prepared by a private agency and this cannot be the basis for imposition of penalty upon the Petitioner. It is alleged that for the purposes of the reading recorded in the meter, the consumer is bound only if the reading is taken in his presence and if reading obtained from the meter is disclosed to him when reading is taken in his presence. Where the readings are obtained or prepared behind the back of the consumer and not even at his premises where the meter is installed, unless and until the consumer has accepted for adoption of such procedure it cannot be applied suo motu by the supplier in order to impose any liability upon the consumer, what to say of penal liability. It is alleged in para 51 that no penalty can be prescribed for violation of the restriction imposed by the State Government u/s 22 of the Act. The provisions of U.P. Electricity Reforms Act, 1999 confer power upon the U.P. Electricity Regulatory Commission to control the procedure of licence etc. to be issued to the supplier of electricity in the State of U.P. and also the manner in which the Tariff is to be prepared and determined by the said licensee. Under no provisions of U.P. Electricity Reforms Act, 1999, the U.P. Electricity Regulatory Commission has any power to control or restrict use or consumption of electricity by a consumer nor any penalty for violation or such restriction can be imposed by the Commission. Thus, the provisions of the Tariff Order, dated 1.9.2001 issued by U.P. Electricity Regulatory Commission providing for imposition of penalty in violation of use of electricity during restricted hours is wholly without jurisdiction.

10. A counter-affidavit has been filed by Respondent Nos. 1, 2, 3 and 5. In para

6 it is stated that the consumer can be restrained from using electricity during certain restricted period as per the orders of the U.P.S.E.B./U.P.P.C.L. issued from time to time and also as per the Tariff rate schedule laid down by the U.P. Regulatory Commission during the respective years. In para 9 it is stated that the provisions of the 1977 Order came to an end in 1984 and stood superseded with the advent of the Electricity (Consumers) Regulation, 1984 and subsequently by the U.P. Electricity Reforms Act, 1999 under which the U.P. Regulatory Commission has been set up which finally approve the Tariff and rate schedule for consumer. The restrictions have been imposed as per circulars dated 15/16.10.1998 and 1.9.2001 of the U.P.P.C.L. In para 13, it is stated that the final draft of the U.P. Electricity Supply Code, 2002 has been prepared and approved by U.P.E.R.C. and widely circulated through newspapers and put up on the website of the Commission. In para 14 it stated that as per Tariff/rate schedule for year 2001 effective from 16.9.2001 for the consumers including Petitioner belonging to category HV-2 restrictions were imposed as per Clause 4 (d) of the same. That clause provides for penalty of Rs. 75 per KVA. The penalty has been imposed on the Petitioner due to his wrongful, illegal and unauthorised consumption of electricity during restricted hours. The penalty has been imposed on the Petitioner on the basis of M.R.I. reports for the respective periods. The Petitioner had full opportunity to file representation before the Executive Engineer and file an appeal before the Area Chief as per law. Instead of availing the alternative remedy the Petitioner filed the present writ petition. It is alleged in para 20 of the counter-affidavit it is stated that the Petitioner never asked for the copies of the M.R.I. reports. It is alleged that the penalty bills raised on the basis of the M.R.I. report were in accordance with law. No manipulation can be made in the M.R.I. reports down loaded on computer and taken out in prints. It is alleged in para 27 that the bills so issued to the Petitioner are absolutely correct. The Petitioner has not availed the statutory alternative remedies available to him as per the provisions of Rule 23 (2) of Electricity Supply Regulations, 1984 and Clause 7.20 of the Electricity Supply Code, 2002 or before the U.P. Regulatory Commission.

11. In para 30, it is stated that 35 days entire recording is stored in the memory of the electronic meter and the entire data from the meter is down loaded and the M.R.I. report is printed out. The M.R.I. report is prepared by the Corporation through itself or its authorised representatives under its directions.

12. Rejoinder-affidavit has also been filed. We have perused the same.

13. On the facts of the case, we find no merit in the petition.

14. The Statement of Objects and Reasons of the Electricity Regulatory Commissions Act, 1998 has given the background to the problems faced in the power sector. The Statements of Objects and Reasons states:

"India"s power sector is beset by problems that impede its capacity to respond to the rapidly growing demand for energy brought about by economic liberalisation.

Despite the stated desire for reform and the initial measures that have been implemented, serious problems persist. As the problems of the Power Sector deepen, reform becomes increasingly difficult underscoring the need to act decisively and without delay. It is essential that the Government implement significant reforms by focusing on the fundamental issues facing the power sector, namely the lack of rational retail tariffs, the high level of cross-subsidies, poor planning and operation, inadequate capacity, the neglect of the consumer, the limited involvement of private sector skills and resources and the absence of an independent regulatory authority. Considering the paramount importance of restructuring the power sector. Government of India organised two Conferences of Chief Ministers to discuss the whole gamut of issues in the power sector and the outcome of these meetings was the adoption of the Common Minimum National Action Plan for Power (C.M.N.P.P).

2. The C.M.N.P.P. recognised that the gap between demand and supply of power is widening and acknowledged that the financial position of State Electricity Boards is fast deteriorating and the future development in the power sector cannot be sustained without viable State Electricity Boards and improvement of their operational performance. The C.M.N.P.P. identified creation of regulatory Commission as a step in this direction and specifically provided for establishment of the Central Electricity Regulatory Commission (C.E.R.C.) and State Electricity Regulatory Commissions (S.E.R.C.'s). After the finalisation of the national agenda contained in C.M.N.P.P., the Ministry of Power assigned the task of studying, the restructuring needs of the regulatory system to Administrative Staff College of India (A.S.C.I.), Hyderabad. The A.S.C.I. report strongly recommended the creation of independent Electricity Regulatory Commission both at the Centre and the State.

3. To give effect to the aforesaid proposals, the Electricity Regulatory Commissions Bill, 1997 was introduced in the Lok Sabha on 14th August, 1997. However, it could not be passed due to the dissolution of the Eleventh Lok Sabha. This has resulted in delay in establishing the Regulatory Commissions leading to confusion and misgivings in various sections about the commitment of the Government to the reforms and restructuring of the power sector. Needless to say, this has also slowed down the flow of public and private investment in power sector. Since it was considered necessary to ensure the speedy establishment of the Regulatory Commissions and as parliament was not in session, the President promulgated the Electricity Regulatory Commissions Ordinance, 1998 on 25th day of April, 1998.

15. The U.P. Legislature in conformity with the provision of Section 17 of the Electricity Regulatory Commission Act, 1998 enacted the U.P. Electricity Reforms Act, 1999 (U.P. Act No. 24 of 1999) to provide for the restructuring of the electricity industry, the rationalisation of generation, transmission, distribution and supply of electricity in the State and regulation by an independent electricity regulatory Commission.

16. The Preamble to the U.P. Electricity Reforms Act, 1999 states:

An Act to provide for the restructuring of the electricity industry in the State of Uttar Pradesh, the rationalisation of generation, transmissions, 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, supply and utilisation of electricity, the quality of service tariff and other charges keeping in view the interest of the consumers and utilities, creation of an environment which will attract participation of private sector entrepreneurs in the electricity industry in the State and generally for taking measures conducive to the development and management of the electricity industry in the State in an efficient, economical and competitive manner and for matters connected therewith or incidental thereto.

17. Section 10 of the U.P. Electricity Reforms Act, 1999 mentions the function of the Commission. These include the power to determine the tariff for electricity, whole sale, bulk grid or retail as the case may be.

Section 15(4) states:

A licence may prescribe the extent to which, and 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 this Act.

Section 15(5)(j) states:

(j) establish tariff or to calculate its charges from time to time in accordance with the directions of the Commission.

Section 15(6) of the Act states:

The provisions contained in the schedule to the Indian Electricity Act, 1910, shall be deemed to be incorporated in, and shall form part of, every licence granted under this Chapter, save insofar as they are expressly varied or excepted by the licence and shall, subject to any such additions, variations or exceptions which the Commission is empowered to make having regard to the purposes of this Act, apply to the undertaking authorised by the licence in relation to its activities in Uttar Pradesh.

18. Chapter VII of the U.P. Electricity Reforms Act, 1999 deals with the Tariff.

Section 24(2) states that save as provided in Sub-section (3), the Commission may specify in regulations the terms and conditions for the determination of the revenue and tariffs and, in doing so, the Commission shall be guided by certain considerations which are mentioned therein.

Section 24(8) states that the Tariff shall not be determined more than once in a financial year and the same shall not be implemented by the licensee unless it had been approved.

Section 28 permits the Commission to impose such fines and charges as may be provided by the regulations for contravention by a generating company, licensee or "other person". The word "other person" in our opinion would include the consumer like the Petitioners.

Section 28(3) states that the fines and charges imposed and compensation ordered to be paid under this section shall be in addition to and not in derogation of any other liability under Chapter XI or under any other law.

Section 37 deals with offences and penalties. Clause (b) states:

(b) 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 under this Act.

Section 41 states that proceedings and actions against a person under this Act shall be in addition to, and not in derogation of, any proceeding or action under any other law for the time being in force.

19. Section 54 deals with the effect of this Act on the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

Clause (3) states that subject to Sub-sections (1) and (2) upon the establishment of the Commission, the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 shall, insofar as this State is concerned, be read subject to the modifications, and reservations provided in this Act specifically mentioned therein.

20. Section 55 is a saving clause. Section 55(1) states:

Savings. - (1) Notwithstanding anything contained in this Act, the powers, rights and functions of the Regional Electricity Board, the Central Electricity Authority, the Central Government and authorities other than the State Electricity Board and the State Government under the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or rules made thereunder shall remain unaffected and shall continue to be in force.

21. A perusal of the aforesaid provisions shows that the Electricity Regulatory Commissions Act, 1998 and the U.P. Electricity Reforms Act, 1999 are special laws while the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 are only general laws regarding determination of tariff. It is settled law that the special law overrides the general law and hence the 1998 and 1999 Act will prevail over the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

22. From above provisions, it is clear that the U.P.E.R.C. has overriding authority to lay down the tariff and issue orders of penalty irrespective of Section 47 of the Act of 1910, which also empowered imposition of penalty for contravention of any order issued under the said Act.

23. In *West Bengal Electricity Regulatory Commission v. C.E.S.C.*, (2002) 8 SCC 715, the Supreme Court held in para 52 that it is the Commission and the Commission alone which is the authority to determine the tariff. It also held in para 56 that Sections 22 and 29 of the 1998 Act are special laws and the 1948 Act is only a general law in regard to determination of tariff. In para 58, it was held that it is the Commission which is the sole authority for determination of tariff.

24. In *Association of Industrial Electricity Users Vs. State of Andhra Pradesh and Others*, , the Supreme Court has held that fixation of electricity tariff or its revision are policy matters outside the purview of judicial intervention unless it is shown to be illegal, arbitrary or ultra vires the Act. In para 4 it was also held that the tariff for the year which was impugned no longer survives and it has been replaced by the tariff for the year 1.4.2001 to 31.3.2002. Similar is the position in the present case. In our opinion the present case also relates to a policy matter and this Court cannot ordinarily interfere in such matters. In the present case, the Petitioner did not apply for supply of electricity during the restricted hours. In fact, for use of electricity during restricted hours, Clause 4 (d) of the Tariff Rate Schedule (copy of which is Annexure-3 to the writ petition) becomes applicable and hence, in our opinion penalty was rightly imposed.

25. In *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, , vide para 32 the Supreme Court following its own decision in *Jiyajeerao Cotton Mills Ltd. v. M.P. Electricity Board* (1999) 2 SCC 52, observed that the Board has power u/s 49 (1) and (3) to levy higher charges for excess consumption of electricity and it is not essential for the Board to make regulations indicating the basis for such levy before making the demand. A similar view has been taken in *Adoni Cotton Mill v. U.P. State Electricity Board* AIR 1976 SC 2414, vide paras 30 to 34.

26. In our opinion, the impugned penalty for peak hours is clearly leviable in view of Clause 4 (d) of the Rate Schedule of the U.P. Power Corporation Ltd., copy of which is Annexure-3 to the writ petition.

27. It may be noted that the impugned Clause 4 (d) is in the Rate Schedule (vide Annexure-3 to the petition). This Rate Schedule has been fixed as per the order of the Commission dated 1.9.2001. Clause 4 of the same prescribes the rate of charge. For consumers who opt for supply during the restricted hours, a higher rate is prescribed, while for those who do not opt for supply during restricted hours a lower rate is prescribed. Clause 4 (d) then goes on to say:

Consumers who do not opt for supply during peak hours/ restricted hours shall be allowed to use the power not more than 15% of their contracted demand. In case of use of excess power over 15% during restricted hours for such consumers a penalty of Rs. 75 per KVA of contracted load for the number of occurrence of default shall be levied. In the month of default, the consumer shall be billed at the rates specified for consumers having unrestricted supply in

addition to the above penalty.

A perusal of Clause 4 (d) indicates that against consumers who had not opted for supply during restricted hours but illegally used electricity during restricted hours two actions can be taken (i) they have to pay at the higher rate prescribed for those who had opted for supply during restricted hours, (ii) they have to pay a penalty as prescribed.

28. As regards the payment at the higher rate, we see nothing illegal in this as it is in accordance with the tariff. Those who use electricity during restricted hours obviously have to pay at the rate fixed for such consumers. The tariff is fixed u/s 24 of the U.P. Electricity Reforms Act, 1999 read with Chapter VI of the U.P. Electricity Regulatory Commission (Conduct of Business) Regulation, 2000, and we find nothing illegal in it.

29. As regards the penalty prescribed by Clause 4 (d), in our opinion, this too is valid as it is in accordance with Section 52(2)(i) of the 1999 Act read with Regulation 5 of the U.P. Electricity Regulatory Commission (Fees and Fines) Regulations, 2000. Under Regulations 5 (3), the Commission can determine the quantum of fine and under Regulation 5 (1) and (4) it can impose it.

30. The impugned Clause 4 (d) is in the Rate Schedule prepared by the Commission. Hence, the penalty imposed by Clause 4 (d) has been imposed by the Commission and thus it is clearly valid.

31. Learned Counsel for the Respondent submitted that if a person having a ticket of a lower class is caught travelling in a train in a higher class compartment then he has to pay not only the difference between the cost of the higher class and lower class tickets, but must also pay a penalty. We are of the opinion that the analogy is apposite to the present context.

32. There is an acute shortage of electricity in the State and hence its supply has to be regulated. Those who violate the regulations by not complying with their own option can obviously be penalised.

33. It may be mentioned that Clause 8.1 of the U.P. Electricity Supply Code, 2002, which has been framed by the Commission u/s 10 of the 1999 Act states:

The Licensee may direct the consumer to curtail, stagger or altogether stop using supply in any of the following conditions:

(b) in the event of restriction on power supply imposed by the State Government u/s 22B of the Indian Electricity Act, 1910 or by the Commission in exercise of powers under the Act.

34. The 1977 Order (vide Annexure-1 to the petition) was issued u/s 22B of the 1910 Act imposing restrictions on power supply. Thereafter restrictions were imposed by the 1984 Order (vide Annexure-2) and then by the circulars dated 15/16.10.1998 and 1.9.2000. We find no illegality, in these restrictions as they are in the public interest.

35. The challenge to the M.R.I. printouts on the basis of which the impugned penalty has been imposed has no merit. These are prepared and, downloaded by computers, as stated in para 22 of the counter-affidavit, and we cannot see how they can be faulted. As stated in para 35 of the counter-affidavit, 35 days entire recording is stored in the memory of the electronic meter, and the entire data from the electronic meter is downloaded from the chip placed within the meter installed at the Petitioner's site in presence of the Petitioner's representative, and on that basis the M.R.I. report is printed.

36. The Petitioner has violated the law by committing breach of his own option, and this Court has no sympathy for such persons as they jeopardize electricity supply in the State. Writ is a discretionary remedy and we are not inclined to exercise our discretion under Article 226 in this case, though, as we have already observed, even on merits the Petitioner has no case. Petition dismissed.