
(1997) 02 GAU CK 0009

In the Gauhati High Court

Case No : Writ Appeal No. 136 of 1996 in Civil Rule No. 874 of 1989

Purbanchal Steel Ltd. and Another

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, 59, 78A

Citation : (1997) 2 GLR 181

Hon'ble Judges : V.K. Khanna, C.J;A.K. Patnaik, J

Bench : Division Bench

Advocate : R. Gogoi and H. Roy, for the Appellant; N.N. Saikia, S.C., J. Chutia and B.P. Todi, G.A., for the Respondent

Judgement

A.K. Patnaik, J.—In this Writ Appeal, the Appellants have challenged the judgment dated 29.1.96 of the learned single Judge in Civil Rule No. 874/89.

2. The case of the Appellants is that in die year 1982, the Government of Assam in the Industrial Department framed a Scheme (hereinafter called "the 1982 scheme") for granting different incentives to new industrial units established in the State of Assam. One of the incentives granted under the 1982 Scheme was that new large, medium and small scale industrial units would be charged power tariff at the rate of Rs. 0.30 per unit for the first three years of commercial production. Acting on the representation held out by the Govt. of Assam in the 1982 Scheme, the Appellants decided to set up a mini steel plant for production of MS Ingots, Steel casting etc. and applied to the Govt. of Assam for various incentives under the 1982 Scheme. Udyog Vikash, the agency for implementation of the 1982 scheme, issued a certificate dated 22.11.86 to the effect that the Appellant No. 1 M/S Purbanchal Steel Limited was registered with Udyog Vikash under registration No. UB/146, dated 22.11.86 and was eligible for incentives under the 1982 Scheme. Thereafter, the Appellants made substantial investments in land, plant and machinery etc, and submitted a claim for the incentives under the 1982 Scheme before the Udyog Sahayak of the Assam

Industrial Development Corporation Limited which issued an eligibility certificate certifying that the Appellant No. 1 commenced commercial production on 18.1.88 and was entitled to power subsidy for the period from 18.1.88 to 17.1.91. Despite the said certificates granted by the Udyog Vikash and Udyog Sahayak, the Assam State Electricity Board (for short the ASEB) raised bills on the Appellant No. 1 at the normal rate of Rs. 1.00 per unit. The Appellant No. 2 requested the Superintending Engineer, Guwahati Electrical Circle, ASEB to bill the Appellant No. 1 at the subsidised rate of Rs. 0.30 per unit as stipulated in the 1982 scheme, but the Superintending Engineer refused to accede to the said request of the Appellant No. 2. The Appellant No. 1 had no other option but to pay the bills for the period from 18.1.88 to 31.3.89 at the normal rate of Rs. 1.00 per unit. The Appellants then approached the Director of Industries, Assam, for reimbursement of differential amount between the subsidised rate of Rs. 0.30 per unit as stipulated in the 1982 Scheme and the normal rate of Rs. 1.00 per unit, but the said differential amount was not reimbursed to the Appellant No. 1.

3. The Appellants finally moved this Court in Civil Rule No. 874/89 for a Writ of Mandamus on the Respondents to grant the incentives to the Appellant No. 1 Company under the 1982 Scheme and for a direction on the ASEB to raise electricity bills at the subsidised rate of tariff of Rs. 0.30 per unit as stipulated in the 1982 Scheme and adjust the amount paid by the Appellant No. 1 in excess of Rs. 0.30 per unit against future electricity bills. Alongwith the said writ application, an application praying for interim order was also filed. The Court issued Rule on 19.6.89 and passed interim orders on 22.6.89, 1.8.89 and 13.8.96 directing that the bills for Rs. 1,38,118.00 dated 24.6.89, Rs. 68,600.00 dated 5.1.89 and Rs. 4,55,674.70 shall not be collected from the Appellants until further orders of the Court. Thereafter the aforesaid Civil Rule was heard by the learned single Judge on 7.9.95, 12.9.95 and 3.10.95 and disposed of by the impugned judgment dated 29.1.96. The impugned judgment of the learned single Judge is in the following terms:

(i) I grant time for a month to the industry to pay the total arrears of electricity charges including the surcharges due. The surcharge shall not be charged till 31.3.90, the date to which the industry is entitled to the incentives.

(ii) The State of Assam shall pay the balance of the subsidy due till 31.3.90 within three months from the date of receipt of this order.

(iii) But it is made clear that this payment of the electricity charges by the Petitioner industry shall not be linked to the payment of subsidy as indicated above in the judgment of the Apex Court.

(iv) The ASEB shall be entitled to submit necessary bill for all these period within 15 days from today and on submission of such bill the payment shall be made.

4. Mr. R. Gogoi, learned Counsel for the Appellant, submitted that a reading of the impugned judgment of the learned single Judge would show that the learned single Judge has followed the order of the Supreme Court dated 26.4.95 in the

case of ASEB and Ors. v. Brahmaputra Steels Private Limited and Ors.. In that Case, the Supreme Court after interpreting the 1986 Industrial Policy Resolution of the Government of Assam has held that grant of power subsidy under the said policy resolution to an industry was not linked with the payment of electricity charges by the industry to the ASEB and that the industry was under the contractual as well as statutory obligation to pay the charge in respect of electricity consumed. But, in the present case the Appellant No. 1 was entitled to incentives under the 1982 Scheme and not the 1986 Industrial Policy Resolution and the language of the 1982 Scheme would show that industries were to be charged at the rate of Rs. 0.30 per unit for the first three years of commercial production. According to Mr Gogoi, the case of the Appellants was thus distinguishable from the case of ASEB and Ors. v. Brahmaputra Steels Private Limited decided by the Supreme Court and the learned single Judge ought not have disposed of the Civil Rule following the order of the Apex Court in the aforesaid case.

5. Mr. Gogoi next pointed out that by the aforesaid order dated 26.4.95 of the Apex Court, the ASEB was directed not to levy any sur-charge for delayed payment for the period from 31.3.91 to 4.4.94 during which interim orders passed by the High Court were in force. In the present case also since interim orders have been passed by the Court in the Civil Rule No. 874/89 on 22.6.89, 1.8.89 and 13.8.90 and were in operation till the Civil Rule was finally disposed of on 29.1.96, the learned single Judge while disposing of the Civil Rule ought to have directed that the ASEB would not charge surcharge for the period from 22.6.89 to 29.1.96. Mr. Gogoi further submitted that under Clause 18(c) of the Terms and Conditions of Supply, 1988 framed by the ASEB under the Electricity (Supply) Act, 1948, surcharge for delayed payment was to be levied only if the consumer did not pay the electricity bill within the due date specified in the bill. But in the present case, the ASEB had not submitted bills to the Appellant No. 1 for the disputed period until the Civil Rule was disposed of and therefore the Appellant No. 1 was not liable to any surcharge until the bills were submitted by the ASEB to the said Appellant.

6. Mr. Gogoi relied on the judgment of the Apex Court in the case of Real Food Products and Ors. v. APSEB and Ors. connected cases reported in (1993) 3 SCC 295 and submitted that the direction of the State Government on the question of policy of the State Government would be binding on the State Electricity Board u/s 78 A of the Electricity (Supply) Act, 1948. According to him, the provision in the 1982 Scheme of the State Government to the effect that new small scale, medium and large scale industries would be charged tariff at the rate of Rs. 0.30 per unit during the first three years of commercial production is a direction on or question of a policy of the State Government and was binding on the ASEB u/s 78-A of the Electricity (Supply) Act, 1948. Mr. Gogoi also submitted relying on the judgment of the learned single Judge in the case of Bajarang Re-Rolling Mills v. ASEB and 5 Ors. (1995) 2 GLR 282, that a promise has been held out in the 1982 Scheme to the Appellants that power tariff would be charged at the rate of

Rs. 0.30 to new small scale, medium and large industries for the first three years of commercial production and since the Appellants have acted on the basis of the promise and established an industry, the Court can compel the ASEB and the State Government to perform the said promise by issuing proper directions. Mr. Gogoi, finally cited judgment of the learned single Judge in the case of Assam Ispat Limited v. State of Assam and Ors. reported in 1993 (1) GU 135, in which the Court held that the Petitioner in that case having set up an industry and started commercial production with effect from 9.2.85 and having been granted concessional tariff till 13.3.87 had the legitimate expectation to be permitted to continue to pay concessional tariff for the remaining period of three years from the beginning of commercial production and the Court has to protect the said legitimate expectation by appropriate direction.

7. Mr. N.N. Saikia, learned Standing Counsel for the ASEB, on the other hand, submitted that the ASEB in exercise of its statutory powers under Sections 49 and 59 of the Electricity (Supply) Act, 1948, has framed the Schedule of Tariff for different categories of consumers and a special category was introduced for new industries under category 13 in the said Schedule of Tariff which provided that new small, medium and large industries starting within 31.3.85 would be charged at the rate of 30 paise per KWH, but the said category 13 has been discontinued with effect from 1.7.86. Accordingly, with effect from 1.7.86, under the 1986 Schedule of Tariff new industries are liable to pay tariff at the normal rate of Rs. 1.00 per unit. Mr. Saikia submitted that since the Appellant No. 1 started commercial production after discontinuance of category 13 and as a matter of fact entered into an agreement for supply of electricity with the ASEB only on 27.11.87, it cannot claim that it was liable to power tariff at the concessional rate of Rs. 0.30 per unit during the first three years of commercial production. He submitted that under the terms and conditions of the agreement between the Appellant No. 1 and the ASEB, the Appellant No. 1 is liable to pay tariff at the normal rate as fixed by the ASEB in exercise of its statutory powers under the Electricity (Supply) Act, 1948, and the Appellant No. 1 was under a contractual and statutory obligation to pay tariff at the normal rate and the grant of subsidy was not linked with the payment of electricity charges as has been held by the Apex Court in the case of ASEB v. M/S Brahmaputra Steels (P) Ltd.

8. Mr. Saikia pointed out that as a matter of fact, the Appellant No. 1 paid electricity bills at the normal rate of Rs. 1.00 KWH during the period 18.1.88 to 31.3.89 but thereafter did not pay at the said rate and was therefore liable to pay Sur-charge in accordance with Clause 18(c) of the Terms and Conditions of Supply, 1988 framed by the ASEB under the Electricity (Supply) Act, 1948. Regarding non-submission of bills by the ASEB to the Appellants, Mr. Saikia stated that in view of the interim orders passed by this Court in the Civil Rule, the said bills were not submitted but the ASEB should not be made to suffer the loss of surcharge for such non-submission of bills. He relied on the judgment of the Apex Court in the case of Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, and the judgment

of the Allahabad High Court in the case of Modi Industries Limited (Steels), Modinagar, Ghaziabad Vs. Executive Engineer, Electricity Distribution Division, Modinagar, Ghaziabad and another, in support of his submission that the Appellant No. 1 was liable to surcharge for the delayed payment of the bills despite interim orders passed by this Court, Mr. Saikia cited the judgment of the Supreme Court in the case of Andhra Pradesh State Electricity Board v. Sarada Ferro Alloys Limited AIR 1993 SC 521 , in support of his submission that the principle of promissory estoppel was not applicable to the present case. Mr. Saikia also cited the judgment of the Supreme Court in the case of Assistant Excise Commissioner and Others Vs. Issac Peter and Others, and submitted that the doctrine of legitimate expectation cannot be invoked to alter the express terms of the contract between the parties. He stated that no directions have been given by the Government of Assam to the ASEB u/s 78-A of the Electricity (Supply) Act, 1948 to provide for concessional tariff at the rate of 30 paise per unit in its 1986 Schedule of Tariff. Although Mr. Saikia in his note has cited several other decisions, we have referred to only those which we have found to be relevant to the issues raised in this appeal.

9. The first question which arises for decision in this case is as to whether the Appellant No. 1 was entitled to the incentives under the 1982 Scheme having commenced commercial production only on 18.1.88. On a perusal of the 1982 Scheme, we find that the scheme was effective from 15.10.82 to 31.3.90 and under the said scheme new industrial units in the state of Assam were eligible for incentives and Udyog Vikash was declared as the implementing agency and was given the authority to issue of eligibility certificate to new industries which were entitled to the incentives under the scheme. Thereafter, on 24.12.86, a new Industrial Policy Resolution was adopted by the Government of Assam which was to be effective from 1.1.87. In the said 1986 Industrial Policy Resolution, however, it was clearly stipulated that those continuing industries which were availing incentives under the 1982 scheme or have obtained eligibility certificates as per the 1982 scheme and satisfied the conditions thereof would continue to be governed by the 1982 scheme and continuing industries were declared to be those which had taken any of the effective steps before 1-1-87 or had been availing themselves any incentives or facility under the 1982 Scheme. The 1986 Industrial Policy Resolution further stipulated that Udyog Sahayak of the Directorate of Industrial/District Industrial Centre for SSI Sector and Assam Industrial Development Corporation Limited for Medium and Large sector would be the implementing agency and will issue eligibility certificate to an industrial unit which fulfilled all the norms of eligibility. In accordance with the aforesaid 1982 Scheme and the 1986 Industrial Policy Resolution, Udyog Vikash has issued a certificate dated 22.11.86 to the effect that the Appellant No. 1 was eligible for incentives under the 1982 Scheme and Udyog Sahayak of the Assam Industrial Development Corporation Limited has issued similar eligibility certificate stating inter alia that the date of commencement of commercial production of the Appellant No. 1 was 18.1.88. Notwithstanding the aforesaid certificates, we

called upon Dr. B.P. Todi, learned Counsel appearing for the State of Assam by order dated 20.5.96 to furnish inter-alia the information 8 to whether the State Government would provide incentives to the Appellant No. 1 which had commenced production only on 18.1.88 under the 1982 Scheme or the Industrial Policy Resolution and Dr. Todi produced before us the letter of Director of Industries of Assam dated 24.5.96 which is extracted herein below:

The Commissioner and Secretary to the Govt. of Assam Industries Department Dispur, Guwahati.

Sub: Writ appeal No. 136/96 in C.R. No. 874/89 Purbanchal Steel Ltd. v. ASEB.

Ref: Letter from the Addl. Sr. Govt. Advocate vide letter No. 1568 Dt. 22.5.89

Sir,

In inviting a reference to the subject cited above I would like to submit the following information sought by you;

1. The amount of subsidy has been calculated on the basis of 1982 scheme only.
2. The amount has been sanctioned by the Government vide letter No. CI 279/94/71 dtd. 21st March '96 and the same has been kept in Revenue Deposit as directed by Government. The amount will be paid directly to the unit in due course.
3. The amount could not be released as the sanctioned amount has been kept in Revenue Deposit which is not yet been released.
4. The unit falls within the purview of the industrial policy of Assam 1982 for which the Udyog Sahayak of AIDC had issued the Eligibility Certificate (No. US/EC/120 dtd.3.2.88). As such the proposal of Power subsidy has been calculated under the 1982 Policy. The sanction and payment of incentives are governed by the relevant Eligibility Certificate issued.

Yours faithfully, Sd/- Director of Industries Assam Bamunimaidan, Guwahati.

It is thus clear from the aforesaid letter dated 24.5.96 of the Director of industries, Assam, that the Appellant was entitled to incentives under the 1982 scheme as per the eligibility certificate issued by Udyog Sahayak presumably because it was a continuing industry which had taken effective steps after the 1982 Scheme came into force on 15.10.82 and before the 1986 Industrial Policy Resolution came into force on 1.1.87.

10. The next question is as to whether the incentives relating to power under (sic) 1982 scheme was a subsidy to be reimbursed to the industry after it paid the tariff at the full rate or was a concessional rate of tariff to be charged to the industry. Paragraphs 4(a) and (b) of the 1982 scheme with which we are concerned in this appeal are extracted hereinbelow:

4. Power Subsidy:

(a) Now units in the Large and medium sector will be charged power tariff at the rate of 30 paise per unit for the first 3 years of commercial production.

(b) In case of new small scale units power tariff will be at the rate of 30 paise per unit for the first 3 years of commercial production.

It is clear from the language used in Paragraph 4(a) and 4 (b) of the 1982 Scheme quoted above that new small scale, medium and large industrial units were entitled to a tariff at the rate of 30 paise per unit for the first three years of commercial production even though the incentive is titled as "Power subsidy". In fact, in accordance with the 1982 Scheme, admittedly, the ASEB granted to new industrial units concessional tariff at the rate of 30 paise per unit under category 13 of its Schedule of Tariff during a certain period. But the aforesaid language that is contained in the 1982 Scheme has not been used in the 1986 Industrial Policy Resolution, which only grants power subsidy for the first three years of production to the extent of 50% of actual consumption to the small scale sector, to the extent of 30% to medium and large industries with connected upto 2.5 M.W. and to the extent 25% to medium and large industries with connected load above 2.5 MW. In the case of M/S Brahmaputra Steels (P) Limited and Ors. the Supreme Court while considering the 1986 Industrial Policy Resolution held that the grant of subsidy to industries under the said policy was not linked with the payment of electricity charges and that the industries were under contractual as well as statutory obligation to pay the charges in respect of the electricity consumed and, if there was any delay in the payment of the subsidy, that would not be a ground for the industries to withhold the electricity charges. In our considered opinion, the said decision of the Apex Court in the case of M/S Brahmaputra Steels (P) Limited is not applicable to the incentive relating to power under 1982 scheme which in clear terms stated that new small scale, medium and large industries would be charged tariff at the rate of 30 paise per unit during the first three years of commercial production.

11. But was the ASEB bound by the said stipulation in the 1982 scheme and grant concessional rate of tariff at the rate of 30 paise per unit to new industries for the first three years of their commercial production? In our opinion, since the ASEB had not held out any promise in the 1982 scheme and it was only the Government of Assam which had held out a promise to charge new small scale, medium and large scale industries at 30 paise per unit for the first three years of commercial production, the ASEB cannot be held to be bound on the principle of promissory estoppel to fulfil the said promise. In the case of Bajarang Re-rolling Mills v. ASEB (supra) cited by Mr. Gogoi, the learned single Judge has also not given any finding that the ASEB was not bound by any promise and has only held that the State Government was bound to fulfil its said promise under the 1982 Scheme. Similarly, on the basis of the said stipulation in the 1982 Scheme announced by the State Government, the Appellant No. 1 cannot claim any right against the ASEB on the principle of legitimate expectation because the ASEB had not by its own conduct allowed the Appellant No. 1 to expect that it would be

charged only at the concessional tariff rate of 30 paise per unit as stipulated in the 1982 Scheme. In the case of Assam-Ispat Limited v. State of Assam (supra) cited by Mr. Gogoi, the ASEB had itself permitted the Petitioner in that case to enjoy concessional tariff of 30 paise till 31.3.87 but thereafter by letter dated 10.6.87 withdrew the said concessional tariff on 1.4.87 and the learned single Judge held that since the ASEB had itself allowed the Petitioner in that case to enjoy the benefits of concessional tariff till 31.3.87, the Petitioner had legitimate expectation that he will be permitted to continue to pay concessional tariff for the remaining period of three years. In Paragraph-12 of the affidavit filed on behalf of the ASEB in the Civil Rule, however, the ASEB itself has taken a stand that the ASEB was duty bound to carry out the policy direction given by the Government u/s 78-A of the Electricity (Supply) Act, 1948 and acting on the instruction of the State Government, the ASEB provided tariff at the rate of 30 paise per unit for the purpose of incentive subsidy.

12. Could it then be held that by discontinuing category-13 by which the said concessional tariff at the rate 30 paise was fixed for new industries and by refusing to grant the same to the Appellant No. 1, the ASEB acted in violation of the said Section 78-A of the Electricity (Supply) Act 1948. In paragraph 12 of the affidavit-in-opposition filed on behalf of the ASEB in the Civil Rule it has been stated that some correspondences were made between the ASEB and the State Government about difficulties in implementing the incentive schemes and the State Government: after considering all these aspects changed the mode of extending subsidy in respect of power supply and decided to disburse the same to the industries concerned directly and such industries paid electricity charges to the ASEB as per the ASEB's tariff. In Paragraph 3 of the said affidavit-in-opposition of the ASEB it has been stated that the State Government of Assam by notification dated 20.4.86 constituted a working group for implementation of the subsidy scheme and the said working group in its meetings held on 25.5.87 and 25.8.87 recommended that with regard to process of implementation of power subsidy under 1982 scheme, the ASEB would charge normal tariff charge and the subsidy amount will be reimbursed by the concerned Udyog Sahayak. Hence, it is only pursuant to the direction of the State Government that category-13 providing for concessional tariff at the rate of 30 paise per unit for new industries was discontinued with effect from 1.7.86 and the said category 13 did not find place in the 1986 Schedule of Tariff of the ASEB. This being the position, it is difficult for us to hold that Section 78-A of the Electricity (Supply) Act, 1948 was violated by the ASEB in discontinuing category-13 providing for special tariff at the rate of Rs. 0.30 per unit for the new industries.

13. But the consequence of the aforesaid discontinuation of the concessional tariff at the rate of 30 paise per unit for new industries with effect from 1.7.86 was that a new industry entitled to incentives under the 1982 Scheme was liable under the Schedule of Tariff of the ASEB framed u/s 49 of the Electricity (Supply) Act, 1948, for the normal rate of Rs. 1.00 per unit, but while liability of such a new industry upto 30 paise per unit was to be met by the new industry from its

own resources, the liability for the balance 70 paise per unit was to be met out of the resources of the State Govt. in the form of subsidy to the new industry. Thus, so far as the ASEB is concerned, it was not to suffer any loss on account of tariff as it was entitled to 30 paise per unit from the new industry and 70 paise per unit from the State Government through the new industry. As a matter of fact, the letter dated 24.5.96 of the Director of Industries, Assam quoted above stated that the amount of subsidy calculated on the basis of 1982 scheme has been sanctioned by the Government and the same has been kept in revenue deposit and has to be disbursed to the unit in due course. In case, therefore, directions are issued to the State Govt. to immediately disburse the amount of subsidy at the rate of Rs. 0.70 per unit to the ASEB by 31.3.97, the ASEB would be able to recover its tariff to the full extent for the first three years of commercial production of the Appellant No. 1 and will not suffer any loss on account of tariff.

14. The amount of subsidy, however, disbursed by the State Government to the ASEB on account of tariff will not take care of the surcharge for delayed payment on the said amount. On a reading of Clause 18(c) of the terms and conditions of Supply, 1988, we find that a consumer is liable for surcharge for delayed payment, if the consumer does not pay bill before the due date of payment specified in the bill. In the present case, the bills were originally raised by the ASEB on die Appellant No. 1 on 9.6.89, 18.7.89 and 25.7.90 but the realisation of the said bills were stayed by interim orders dated 22.6.89, 1.8.89 and 13.8.90 of this Court passed in the Civil Rule. The ASEB, therefore, has taken a stand that after the said interim orders were passed, no further bills were raised and it is only after disposal of the Civil Rule by the learned single Judge that the bills have been raised and surcharge for delayed payment has been levied on the Appellant No. 1.

15. Surcharge for delayed payment of electricity bills is realised from a consumer under Clause 18(c) of the Terms and Conditions of Supply 1988 at the rate of 2% or 5% per month, as the case may be, by way of interest on the unpaid amount of the bills. Hence the question as to whether the Appellant No. 1 should or should not be liable for delayed payment surcharge on the unpaid amount of the bills-will not depend on whether or not bills have been submitted to the consumer or whether or not there were good reasons for not submitting the bills. As has been held by the Supreme Court in the case of Kerala State Electricity Board v. MRF Limited (supra) cited by Mr Saikia, while granting relief with regard to surcharge for delayed payment, the Court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practical and does not bring out any merited hardship to either of die parties. In the present case, there was a clear stipulation in the 1982 Scheme that new small, medium and large scale industries would be charged tariff at the concessional rate of 30 paise per unit for the first three years of commercial production. Hence as far as the Appellant No. 1 is concerned, it was required to arrange its affairs in such a way as to pay electricity tariff at the rate of 30 paise per unit. Subsequently, however, there was an arrangement between the State Government and the ASEB that the

mode of granting the said incentive should be changed and the new industry should pay tariff at the normal rate and the State would reimburse to the industry the amount of concession in the shape of subsidy. Accordingly, the Appellant No. 1 paid full amount of the bills for the first fourteen months of its commercial production from 18.1.88 to 31.3.89 but was not reimbursed with any subsidy as per the aforesaid arrangement, and in the circumstances the Appellant No. 1 stopped paying tariff at the normal rate and claims to have paid tariff at the rate of 30 paise per unit for the remaining three years of commercial production. The amount which was to be disbursed to the Appellant was thus utilised by the State Government and not paid to the Appellant No. 1, and it will be unfair, unreasonable and impracticable to permit the ASEB to recover from the Appellant No. 1 surcharge on the unpaid amount of the bills withheld by the State Government and this is a fit case in which we should direct that the ASEB will not levy and collect from the Appellant No. 1 surcharge for delayed payment on the amount representing 70 paise per unit of the tariff at the normal rate during first three years of commercial production of the Appellant No. 1.

For the reasons stated above, we set aside the impugned judgment and order dated 29.1.96 of the learned single Judge passed in Civil Rule No. 874/89 and dispose of this appeal with the direction that the State Government of Assam shall by 31.3.97 disburse to the ASEB the amount of power subsidy payable to the Appellant No. 1 under the 1982 Scheme and with the further direction that for the delayed payment of the said amount, the ASEB will not levy or collect any surcharge from the Appellants. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.