

(1992) 03 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 738 of 1984

Rathi Allowys and Steel (P) Ltd.

APPELLANT

Vs

Raj. State Electricity Board and Others

RESPONDENT

Date of Decision : 13-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49, 59, 78A

Citation : (1992) 1 RLW 426 : (1992) 1 WLN 559

Hon'ble Judges : K.C. Agrawal, C.J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—Sri Paras Kuhad, learned Counsel appearing on behalf of the petitioner argued with his usual tenacity. Most of the arguments raised by him are the same which were heard by us from Sri B.L. Purohit in the case of Banswara Syntex Ltd. v. R. SEB D.B. Civil Writ Petition No. 5472 of 1991. Sri Kuhad emphasised that the Rajasthan State Electricity Board (hereinafter referred to as the "Board") has been illegally charging fuel adjustment from the petitioner every year on the pretext of escalation in its price. His argument was that while revising the rates every year, care of the escalation has been taken, the Board's action of arbitrarily enhancing the charges is unjustified and against Section 49 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the "Act"). He further contended that the Board has not given correct figures which could enable the Court to uphold the escalation in coal prices. He urged that when escalation has already been taken into account while preparing the basic rate in the year 1983-84, fuel surcharge could not be the additional basis for enhancing the tariff and realising it from the petitioner.

2. In Banswara Syntex Ltd. (supra), we have already negated the aforesaid argument of the learned Counsel for the petitioner. In the counter affidavit filed on behalf of the Board, a detailed reply had been submitted in justification of

charging escalation. In *Banswara Syntax Ltd.* (supra), we have quoted the paragraphs from the counter Affidavit, and, therefore, they need not be mentioned here.

3. Shri Gupta, learned Counsel for the Board contended that the words "Cost Variation and Fuel Adjustment clause" are wide enough to include within its limit the fuel cost adjustment to H.T. consumers and the submissions made by learned Counsel for the petitioner was not correct. It has been held in *M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others*, that preparation of a tariff and charging escalation are economic policies and the court has no authority to interfere with the same.

4. In the aforesaid case of *Hindustan Zinc Ltd.* Hon^{ble} the Supreme Court held that the court cannot strike down the revision of tariff as arbitrary unless the resulting surplus reaches such a height as to lead to the inevitable decision that the Board has shed its public utility character and is obsessed by the profit motive of private entrepreneur in order to generate a surplus which is extravagant. We are also of opinion that law is made by legislature or by a person assigned the task by it (the legislature). Price fixation under the Act as held in the aforesaid case by the Supreme Court, is a policy matter. To sanction general judicial intervention, simply because the court would prefer a different choice to that of the administrator, runs counter to the fundamental basis of division of power in the two elements, which constitute the Govt. viz., the executive and the legislature. That would entail reallocation of power from the legislature and the bureaucracy to the courts. Such a power cannot be appropriated by a court under the garb of judicial review. Judicial review is not the construction of statutory permit to a judicially imposed limit on discretion. It was drawn narrowly because of the constitutional position of the courts. They cannot intervene unless the decision maker steps outside the boundaries of what the legislature believed to have allowed. That construction is intended to ensure that the courts do not substitute their view for that of the administrator, just because they believe that a different conclusion could be more reasonable.

5. Sri Kuchad urged that the allegations made in the counter affidavit of the Board are inadequate and did not meet the points taken up in the writ petition by explaining the circumstances, which led the Board to enhance the rule surcharge. What he urged was that the rates charged from agricultural consumer is far below the cost of generation, which naturally means that the entire burden is being shifted on to the other consumers and in particular, the H.T. industrial consumers. This is neither reasonable nor just. In effect, the H.T. industrial consumers are made to subsidise the agriculturists inasmuch as the Govt. has failed to make any grant to the Board over these years. The burden amongst all categories of consumers should be reasonable and equal. Tariff for agricultural consumers is much too less than what is spent in generation and distribution, as a result whereof, charges from H.T. industrial consumers per annum is totally unreasonable compelling them to bear the brunt.

6. In our opinion, Section 49(2) empowers the Board to classify the consumers into more than one category, having regard to the factors mentioned therein. The power to classify consumers is inherent in the sub-section. When the sub-section says that in fixing the uniform tariffs the Board shall have regard to (i) nature of the supply, (ii) purposes for which supply is required, (iii) co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner with particular reference to development of areas not being served, or inadequately served, (v) standardisation of methods and rates of charges for supply [vi] extension and cheapening of supplies of electricity to sparsely developed area, it follows that the Board can fix different tariff rates for different categories of consumers having regard to the aforesaid factors. Sub-section (3) of Section 49 is also to the same effect. It also entitles the Board to fix special tariffs for consumers if the geographical position of the area, the nature of supply, the purpose for which the supply is required, and other relevant factors warrant the same.

7. Section 59 lays down the general principles which the Board must keep in mind and comply with in the conduct of its affairs. We have already quoted this Section in *Banswara Syntex Ltd.* (supra). As already observed in that case, this Section obliges the Board to carry on its operations and adjust its tariffs so as to ensure that the total revenues in any year of account yield a surplus of not less than 3% or such higher per centage as the State Govt. may specify in that behalf. It is a matter of common knowledge that the Rajasthan State Electricity Board is running at a loss and this objective could not be achieved. Section 78A empowers the Govt. to issue directions to the Board on questions of policy, and the Board is to be guided by such directions in discharge of its functions. This power is consistent with the provisions of the Act.

8. In the instant case, the complaint of the learned Counsel for the petitioner, as stated above, is that the agriculturists are being favoured at the cost of industrialists or those who manufacture and make various items needed for the countrymen and for export. We all know that India is an agricultural country and having regard to the large population, the overriding obligation is to be self-sufficient in food. The growing population emphasises the importance and significance of the food production. With green revolution and efforts of the Govt., we have been able to achieve the target of self-sufficiency in food-grains, but still off and on shortage is faced. This year also, the Govt. have decided to import wheat from foreign countries. We do not mean to say that industry is any less important. We cannot afford to be a backward agricultural country. We have to advance on the industrial front as well. But among the two, agriculture is bound to be given a preferential place. Anything can be dispensed with, but not food and a nation cannot always depend upon others for such a basic necessity. It is for this reason that the Govt. decides a policy of making electricity available to the agriculturists at cheaper price than to the H.T. industrial consumers. No one should take exception to the same. It is a matter of policy for the determination of which Govt. have a final say.

9. Following the decision of the Andhra Pradesh High Court in Nava Bharat Ferro Alloys Limited Vs. Andhra Pradesh State Electricity Board, Hyderabad, , the Supreme Court in Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others, has laid down that fixation of a particular tariff is within the power conferred upon the Govt. by Section 78A of the Act. The same view was taken by the Supreme Court in M/s Hindustan Zinc Ltd. (Supra). For this reason, the controversy that electricity charges paid by agriculturist is much less than the" industrialist cannot be raised by means of Article 226. The counter affidavit filed on behalf of the Board gives complete reply to all the points urged by the learned Counsel for the petitioner.

10. Shri Kuhad also raised a technical objection relating to admissibility of the counter affidavit having not been sworn according to the method prescribed for. We are unable to find any substance in this submission. At the fag end, when the hearing of most of the cases is finished, we cannot think it appropriate to reject the counter affidavit on the lines suggested. Moreover, the ground of rejection is untenable. It fulfills all the procedural requirements in the manner, an affidavit is sworn. What is really noteworthy and goes a long way to frustrate the case of the petitioner is that no rejoinder has been filed rebutting or controverting the assertions made in the counter affidavit. Not only that non-filing of rejoinder is crucial in this case, we have otherwise found that the facts stated in the counter are correct.

11. Sri Kuhad also insisted the court to get the copies of the letter written by the Board to the State Govt., which according to his opinion might establish that the rates had been increased with a view to favour the agriculturists. We have already found justification for realising fuel surcharge and even if it was done with a view to help the agriculturists, that will not invalidate the same.

12. At this junction, we wish to note that the petitioner has not, anywhere stated in the writ petition, that he suffered loss on account of increase in the fuel surcharge as he had to sell at a lesser price than the actual cost of the product. To uphold the submission of the petitioner that he is not liable to pay the fuel surcharge at the rates demanded by the Board would result in " unjust enrichment." Article 226 is not meant for the purpose of helping those, to whom no injustice has been done. The petitioner, presumably, must have included the enhanced electricity charges and realised it from the purchaser, and having done so, he did not suffer any loss in any way. As already said above, if we grant him the relief, it would result in giving him the benefit of "unjust enrichment". This is another ground for rejection of this petition.

13. In the result, this writ petition as well as those mentioned in the list appended with this judgment, are dismissed. As the petitioners in all these cases are enjoying the stay order granted by this court, they are directed to pay cost of Rs. 1000 (Rupees one Thousand) in each case to the Board. Stay orders are vacated.