

(1996) 08 AP CK 0049

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2696 of 1989

The Associated Cement Companies Ltd.

APPELLANT

Vs

Andhra Pradesh State Electricity Board

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21

Electricity (Supply) Act, 1948 — Section 2, 49

Electricity Rules, 1956 — Rule 31, 58, 63(3)

Citation : AIR 1997 AP 142 : (1996) 4 ALT 1011

Hon'ble Judges : S. Parvatha Rao, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : K. Srinivasamurthy, for the Appellant; C.V. Nagarjuna Reddy for A.P.S.E.B., for the Respondent

Judgement

S. Parvatha Rao, J.—In this writ petition, the petitioner questions the decision of the A. P. State Electricity Board --respondent herein, communicated to it by the Member Secretary in Letter No.SE(Comm1.)/ III/281/88-1, dated 14-12-1988, on its representation made pursuant to the orders of the Hon''ble Supreme Court in Civil Appeal No. 800, of 1988 in the matter of higher voltages prescribed by the Board in B.P.Ms. No. 607, dated 21-7-1981.

2. The facts in brief have to be stated first. The petitioner, a public limited company, set up a factory at Mancherial for manufacturing Portland Cement. It entered into an agreement with A. P. State Electricity Board in 1958 for supply of High Tension (H.T.) energy to that unit. Initially, the contracted demand was 5000 KVA at 3.3 KV pressure. Subsequently, at the request of the petitioner, the contracted demand was increased to 7,000 KVA. Thereafter, on 20-1-1981, the petitioner addressed a letter to the respondent-Board requesting for a further additional 1600 KVA; by the letter dated 7-3-1981, the Board agreed to supply the additional demand, but, on condition that the petitioner changes over and agrees to receive energy at 132 KV instead of 3.3 KV at which it was receiving supply. However, thereafter in B.P.Ms. No. 607 dated 21-7-1981, the Board

required the Existing H.T. consumers to receive energy at higher voltages depending on the quantum of contracted demand and also required such of those consumers who continued to receive at lower voltages to pay additional surcharge as indicated in the following table:

Contracted demand "of consumer Voltage at which supply is to be availed Voltage at which supply is availed Additional charge to be levied

Upto and including 1500 KVA 11KV 6.6 KV 3.3 KV 5%

1501 KVA to 5000 KVA 33 KV 11KV

6.6 KV 3.3 KV 2.5%

7.5%

Above 5000 x KVA 132 KV or 220 KV 66 KV 33 KV

11 KV 6.6 KV 3.3 KV 5% 7.5%

10%

15%

3. The Board gave to such of those consumers who were required to change over to higher voltage six months' time to effect the change over and receive supply at the higher voltages applicable to them upto 28-2-1982 and also clarified that after the said period such of those consumers who failed to receive supply at the respective higher voltages would have to pay the additional charges as indicated above. Several H.T. consumers who were required to receive energy at higher voltages, including the petitioner, Questioned the action of the Board in that regard. The petitioner's Writ Petition No. 4202 of 1982 was allowed by a learned single Judge of this Court by judgment dated 26-10-1982 and the Board's Writ Appeal No. 1000 of 1982 questioning the order of the learned single Judge, was allowed by a Division Bench of this Court by order dated 25-6-1987. The petitioner approached the Supreme Court against the judgment of the Division Bench of this Court; leave was granted and petitioner's Civil Appeal No. 800 of 1988, along with similar appeals preferred by other consumers, was dismissed by the Supreme Court by judgment dated 8-3-1988, Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, The Supreme Court upheld the power of the Board to require the H.T. consumers to receive energy at higher voltages and also the power to impose additional charge on the consumers continuing to receive energy at lower voltages. The Supreme Court upheld the decision of the Board as follows:

"12..... The fact remains that lower the voltage higher the transmission loss, higher the voltage lower the transmission loss, and it is also not in dispute that these appellants are high tension consumers consuming substantial power and, therefore, when power travels through transmission lines even for short distances it is not smaller quantities of power but heavy quantities of power are

transmitted and in this view of the matter it could not be said that the policy decision taken by the Board to supply these high tension consumers power at high voltage so that transmission loss and transformation loss should be minimised could not be said to be any wrong decision or a decision not supported by scientific reasoning."

4. As regards the contention that it was the duty of the Board to establish and maintain sub-stations and main transmission lines and that it was not open to the Board to transfer this responsibility to the consumers by requiring them to make their own arrangements to step down electricity after taking it at a high voltage, the Supreme Court, while rejecting the said contention, held as follows Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, :

"..... Section 2, sub-clause (7) of the Act defines the main transmission lines but all this in sub-clause (7) of Section 2 refers to is about transmission of electricity from a generating station to another generating station or to a sub-station. Apparently it refers to all the lines and equipments required to be installed from the generating station to the distributing sub-station. Apparently both being that of the Board itself it has to maintain it and on this basis it could not be contended that if the consumer has to receive power at a high voltage and if he wants to utilise it at a low voltage it is not his responsibility to instal equipments for stepping down the power from high voltage to low voltage."

5. The Supreme Court also dealt in detail with the contention of the consumers that the time of six months granted was too shod considering the equipment required to be installed for the purpose of receiving energy at higher voltages and also for stepping down the energy to the required levels by the consumers themselves. The discussion in this regard in the judgment of the Supreme Court is relevant for the purpose of dealing with the questions raised in the present writ petition; which reads thus:

"13. It was also contended that 6 months" time granted was too short in view of the fact that these consumers were expected to instal transformers and equipments which ordinarily are not easily available in this country and which involved high capital investment. It was also suggested that even the respondent-Board has not been able to lay lines for supply at high voltage as during the course of this litigation most of the appellants have accepted to receive the supply at the high voltage and therefore it was contended that the enhanced rate for supply at low voltage which was brought into force immediately after six months of the issue of this notification is not only not justified as it was termed by learned counsel for the petitioners to be penal but it was contended that it is not reasonable as in spite of the fact that the petitioners accepted to receive supply at high voltage and some of them have even installed the transformers and other equipments but still Board was not in a position to lay supply lines for the high voltage supply of power and on this basis in substance it was vigorously contended that this enhanced rate should not be made chargeable from the date

immediately, after the expiry of six months after the issue of this notification.

14. In one of the cases i.e. A.P. Paper Mills it has been specifically alleged that in spite of the fact that the petitioner has installed a transformer but the respondent-Board could not lay down the lines as there was some injunction issued against the Board when the work for laying the lines started still, although the Board is not in a position to supply the power at high voltage still the appellant is compelled to pay the higher rate as he is not receiving power at the high voltage indicated in the notification.

15. So far these aspects of the matter are concerned admittedly they were not before the High Court. Originally what was challenged in the High Court was the power of the Board to unilaterally alter the conditions of supply. This question about from what date the higher rates should be charged and as to whether grant of six months' time to complete the preparation for receiving the supply at a-higher voltage is reasonable or not were not before the High Court (single Judge) nor before the Division Bench and in fact, facts in respect of each petitioner on the basis of which these questions could be considered are also not before us although an attempt has been made by some of the appellants by additional affidavits and documents to place it before us. But it is not sufficient nor it is proper to decide these questions. After all the respondent-Board is an authority under a Statute and if the appellants are able to satisfy the authority that the time of six months in the context of the circumstances when this notification was issued was not reasonable it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings. It is also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate. But all these questions cannot be decided in the scope of the present appeals."

6. In the light of this discussion, the Supreme Court left it open for consideration of the Board the question regarding imposition of the higher tariffs "on failure of the consumers to receive the supply of the voltage indicated in the notification at the rates specified therein or not, and gave liberty to the consumers to approach the Board and left it open to the Board in the facts and circumstances of each case not to levy the surcharge indicated in the notification during a particular period after taking into consideration the facts and circumstances of each particular case.

7. Pursuant to the observations and directions of the Supreme Court in the said judgment, the petitioner made its representation dated 25-3-1988 to the Board. In the main, the petitioner's submission in the representation was that it immediately took action to acquire the equipment like transformer etc. to receive the supply of energy at 132 KV; on 21-3-1984 itself the Chief Electrical Inspector inspected the installation of the petitioner for receiving the energy at 132 KV and

issued a certificate granting the statutory approval under Rule 63(3) of the Indian Electricity Rules, 1956 dated 27-3-1984 and copies of same were sent to the Divisional Engineer Electrical (Operation), A.P.S.E.B. at Adilabad and also to the Assistant Electrical Inspector at Nizamabad mentioning also the list of equipment installed. However, the respondent-Board was not ready to supply energy at 132 KV till 9-11-1984. Under B.P.Ms. No. 607, dated 21-7-1981 six months period from 1-9-1981 was granted to the petitioner for getting ready to receive the supply at 132 KV and the said period expired on 28-2-1982. In spite of the fact that the respondent-Board was not ready to supply the energy at 132 KV on 28-2-1982 or even on 21-3-1984 when the petitioner in fact was ready to receive the supply at 132 KV and even though the respondent-Board admittedly was ready only on 9-11-1984, the petitioner was required to pay the additional charges described as "additional surcharge" at 15% -- on demanded energy charges from 18-2-1982 to 9-11-1984. The petitioner question this in its representation and submitted that as the Board was not ready to supply the energy at 132 KV to the petitioner till 9-11-1984, the imposition of additional surcharge on it was illegal. The petitioner had stated in its representation as follows:

"..... It may be noticed from the preamble to B.P. 607 that B.P. was issued in order to ensure that HT consumers with different contracted demands avail supply at specified voltage and also it has been specified voltage at which supply has to be made and availed by HT consumers and finally it is mentioned that HT consumers must be in a position to receive supply at the specified voltage and on their failure to receive supply will attract additional charges. So it is condition precedent even as per B.P. 607 that the supply at the particular voltage must be made by the Board and only failure to receive supply at that voltage will have to be compensated by the additional charges specified in the said notification. In the absence of the Board making supply at the said voltage as stipulated in B.P.M.S. 607, the question of receiving supply at the specified voltage does not arise and in this case the Board could make supply only in Nov. 1984 even though the Company's sub-station was made ready earlier and was in a position to receive supply in view of certificate issued by the Chief Electrical Inspector, Government of Andhra Pradesh and it is due to non-laying of supply lines to make supply at 132 KV supply could not be received by the company till Nov. 1984. So in the absence of the Board making supply at 132 KV the question of demanding any payment as specified under B.P. Ms. 607 does not arise."

8. The petitioner also narrated the delayed steps taken by the Board for supplying the energy to it at 132 KV as follows:

".....Subsequent to the issue of B.P. 607 the Board has constructed sub-station 5 km away from the factory for the purpose of receiving power at 132 KV. It could be seen from the letter written by Executive Engineer, TLC to the District Collector, Adilabad, dated 25-4-1983 that even the land was acquired for the purpose of construction of 132 KV sub-station only subsequent to the aforesaid

B.P. 607 and they intend to begin construction some time latter and they were requesting the collector to put up a bore well so that they could have water available for construction work and also for the staff who are engaged for the said construction. It is evident from the said aforesaid letter that they took up construction of sub-station to receive power at 132 KV subsequent to 25-4-1983 and they were not ready at the time when B.P. 607 was issued and as had already been stated they completed the work only in Nov. 1984 and company cannot be made responsible for anything done prior to November 1984 as the Board itself was not ready to supply power at 132 KV the question of compensating their alleged losses does not arise."

9. The petitioner also stated -- and it is not disputed -- that as required by the Board it paid towards "voluntary loan contribution" for laying of the service lines by the Board a sum of Rs. 27.89 lakhs on 13-2-1982 itself as required by the Board in its letter dated 19-11-1981. The petitioner also informed the Board the problems faced by it in procuring the equipment for receiving the energy at 132 KV. It stated that the transformers for the purpose were not available in the market and they had to be manufactured as per orders and that only two or three manufacturers were there in the country and that they took considerable time for supplying them, the normal time being 18 to 24 months, and after supply of the equipment it would take 4 to 6 months for erection and commission of the same. The petitioner could make one circuit ready by August, 1982 and could instal the entire equipment only by January, 1984.

10. The member Secretary of the Respondent-Board in his letter dated 14-12-1988 stated that the Board considered in detail the representations made by the petitioner as well as the points raised during the personal hearing and that after due consideration ordered as follows;

"(1) The additional charges prescribed by the Board are to compensate the Board against transformation losses and additional capital outlay required and worked out on averages obtaining taking the State as a whole and not with particular reference to a particular consumer which is not admissible under uniform tariffs. In fact, additional charges prescribed by the Board do not completely compensate the above losses and additional capital outlay.

(2) The Board notes that the payment of Service Line charges as demanded originally was paid by you on 11-2-1982. Thereafter in 1985 additional charges was demanded which was finally cleared by you on 21-5-85. The Board also notes that you had obtained the approval from Chief Electrical Inspector to Government for the installation-on 22-3-1984.

(3) Inasmuch as you had paid Service Line Charges initially and it was only the additional charges which was levied and paid by you subsequently the Board decides that 22-3-1984 i.e. the date of approval of the Chief Electrical Inspector to Government will be the date on which you will be deemed to have become ready to receive supply.

(4) However, Board has considered your request to allow time beyond six months originally stipulated having regard to the practical difficulties like procurement of equipment and erecting the same and decided to levy additional charges from 1-3-1983 instead of 1-3-1982 i.e. the period of six months is now increased to 18 months by the Board in consideration of your representation and practical difficulties involved.

In the event the Board orders that the additional charge would be levied on your Firm from 1-3-1983 to 21-3-1984."

11. The petitioner contends that no reasons whatsoever were given for extending the time to the petitioner by only one more year. In fact, according to the petitioner, the Board uniformly extended time to all the consumers by one year, without taking into consideration the special facts of each consumer. The learned counsel for the petitioner, Ms. Sudha, contends that from this it is obvious that the Board had not applied its mind to the facts pertaining to the petitioner. The learned counsel for the petitioner also contends that when the Board itself was not in a position to supply energy at 132 KV till 9-11-1984, the imposition of additional charges from 1-3-1983 to 21-3-1984 was unauthorised, unreasonable and arbitrary. She contends that when it was accepted that the Board should not charge additional charges from 22-3-1984 to 9-11-1984 it would be only on the basis that the Board was not in a position to supply energy at 132 KV, and that the same position was obtaining also during the period from 1-3-1983 to 21-3-1984; therefore, there could be no basis whatsoever for collecting the additional charges for the period 1-3-1983 to 21-3-1984.

12. On behalf of the learned Standing Counsel for the Board, Mr. Prarmod contends that additional charges were imposed from 1-3-1983 to 21-3-1984 because it was incumbent on the petitioner to be ready to receive the supply of energy at 132 KV within the time allowed to it i.e. eighteen months as extended by the Board after consideration of the petitioner's representation under the letter dated 14-8-1988 of the member Secretary; and as it was not ready to receive the supply at 132 KV by f-3-1983 and continued to receive energy only at 3.3. KV from 1-3-1983 to 21-3-1984, it was bound to pay the additional surcharge as per B.P. Ms. No. 607 dated 21-7-1981. He contends that the requirement of the petitioner to get itself ready within the time allowed to receive energy at 132 KV is independent of the readiness of the Board to supply energy at 132 KV, and that merely because the Board was not ready to supply energy or delayed in supplying energy at 132 KV, the liability of the petitioner to pay the additional surcharge at the specified rates for not being able to receive the supply of energy, at 132 KV is not affected because, according to him, that liability is independent of the Board's readiness or capacity to supply energy at 132 KV when the petitioner became ready to receive energy at 132 KV.

13. We may also mention that in the counter-affidavit of the Superintending Engineer/Commercial filed on behalf of the respondent-Board, it is stated that the petitioner "paid last instalment of voluntary loan on 25-8-1985." To say the

least, this is an incorrect statement of fact. It is not denied --and it cannot be denied -- that the petitioner paid Rs. 27.89 lakhs on 13-2-1982 itself. After the service line was laid, the respondent found that some more amount had to be paid by the petitioner towards voluntary loan contribution and after that was demanded in 1985, the petitioner paid a sum of Rs. 1.19 lakhs on 25-8-1985. In the letter of the Member Secretary dated 14-12-1988 this was noted as follows:

"(2) The Board notes that the payment of Service Line charges as demanded originally was paid by you on 11-2-82. Thereafter in 1985 additional charges was demanded which was finally cleared by you on 21-5-85. The Board also notes that you had obtained the approval from Chief Electrical Inspector to Government for the installation on 22-3-1984."

By no stretch of imagination can it be described as an instalment, or last instalment for that matter. It is admitted in the counter-affidavit that the Board completed all its work in November, 1984, that is, for supply of energy to the petitioner at 132 KV. No reasons whatsoever are given even in the counter-affidavit as to why and on what facts extension of time to the petitioner was given for one more year only.

14. The only question to be considered in the writ petition thus is whether the respondent-Board is justified in imposing the additional charge under B.P. Ms. No. 607 dated 21-7-1981 for the period from 1-3-1983 to 21-3-1984?

15. We are inclined to take the view that the respondent-Board is not justified and that the imposition of additional charge for the said period on the petitioner is arbitrary and unreasonable in view of the fact that the respondent was not in a position to supply energy to the petitioner at 132 KV during the said period and till 9-11-1984. It is in fact on this basis that the respondent had decided not to collect the additional charges from 22-3- 1984 to 9-11-1984. The amendment introduced by B.P. Ms. No. 607 dated 21-7-1981 is by way of substitution of condition (1) under Part "A" of H.T. Tariffs by a new condition (1) which is as follows:

"Condition (1): The voltage at which supply has to be availed by EHT/H.T consumers shall be:

For contracted demand up to and including 1500 KVA 11000 Volts.

For contracted demands from 1501 KVA up to and including 5000 KVA. 33000 Volts.

For contracted demands from 5001 KVA and above. 132000 Volts or 220000 Volts as decided by Board.

Existing H. T. Consumers who are availing supply at a voltage less than that specified above have to make necessary arrangements for changing their supply system within a period of 6 months so as to avail supply at the above voltages. Failure to make such arrangements to receive supply at the specified voltage

within the specified period will attract additional charges for low voltages for compensating the Board against transmission and transformation losses and cost of additional capital incurred at the rates indicated below."

16. The table showing the additional charges to be levied was already extracted earlier. A reading of this new Condition (1), to the extent relevant, shows that H. T. Consumers whose contracted demand was 5001 KVA and above should avail supply of energy at 132 K.V or 220 K V as decided by the Board -- so far as the petitioner is concerned, it was required to avail at 132 KV. It is stated that H. T. consumers availing supply at a lesser Supply (rate) should make necessary arrangements for changing their supply system within a period of six months to avail the supply at the higher voltage. It is then stated that failure to make arrangements to receive supply at the specified voltage within the specified period would attract additional charges for low voltages "for compensating the Board against transmission and transformation losses and cost of additional capital incurred" at the rates indicated. The additional capital incurred mentioned obviously is in respect of making available the supply to the consumers concerned at the higher voltage. A reading of this condition (1) makes it obvious that the additional charges could be imposed only if the Board was in a position to supply energy at the higher voltage and yet the consumer was not ready to receive supply at the specified higher voltage. Otherwise, it would lead to the unreasonable and absurd result that even though the Board was not in a position to supply the energy at the higher voltage, the consumer should pay for not receiving the energy at the higher voltage. It would be unreasonable for the Board to charge for the period consumer was not in a position to receive supply when in fact the Board was not ready and prepared to supply the energy at the higher voltage. On the facts of the present case, we are compelled to take this view because of the admitted fact that the petitioner paid to the Board as much as Rs. 27.89 lakhs towards the so-called "voluntary loan contribution" on 13-2-1982 itself and yet the Board had not taken any steps for enabling itself to supply energy at 132 KV to the petitioner. It would have been different if the Board was ready to supply energy within six months -- or eighteen months -- from 1-9-1981, the date when the amendment under B.P. Ms. 607 came into force, and the petitioner was not in a position to receive supply within the time allowed. We may also point out that extension of time by one more year from 28-2-1982 to 28-2-1983 was done only after the representation made by the petitioner and other consumers, and was communicated only by the letter dated 14-12-1988 of the member Secretary of the Board. This so-called extension was not after taking, into consideration the difficulties and the problems faced by the petitioner in particular; it was a general "extension" given to all consumers Ex Post Facto. We have also to keep in view the fact that the additional charges are said to be levied to compensate against transmission and transformation losses and cost of additional capital incurred, obviously for not availing supply at higher voltage even though the Board was ready to supply energy at the specified higher voltage. In view of this position, we are unable to accept the contention

advanced on behalf of the Board that the obligation of the Board to supply energy at the specified voltage was distinct and separate from the obligation imposed under the new condition (1) on the consumer to be ready to receive the supply at the specified voltage, and that even if the Board was not ready to supply energy at the specified voltage it could demand additional charges because the consumer was not ready to receive the supply within the period allowed. In the context, we have to hold that the period allowed was both for the petitioner-consumer as well as the Board and that the obligation to receive supply was dependant on the reciprocal obligation on the part of the Board to be ready to supply. We have also to hold that to levy additional charges on the basis of the new condition (1) when the Board itself was not in a position to supply energy at the higher voltage would be unreasonable and arbitrary.

The expression used is ""to avail supply" which would necessarily and logically mean that the supply was available but was not availed by the consumer -- when supply was not available, it cannot be said that it was not availed.

17. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , the Supreme Court has held that the Board is "the State" under Article 12 of the Constitution of India and that therefore it is bound by Article 12.

18. In Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others, , the Supreme Court held as follows (at P. 662 of AIR):

".....It is well established that where a corporation is an instrumentality or an agency of Government it would, in the exercise of its powers and function, be subject to the same Constitutional or Public Law limitations as apply to the Government and the principle of law inhibiting arbitrary action by Government would apply equally where such a corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and enter into relationship with any person in any manner it likes according to its sweet will. The acts of such a corporation must be in conformity with some principle which meets the test of reasonableness and relevance."

The Board has therefore to act reasonably and without arbitrariness. We are also of the view that in the context in which the new condition (1) was introduced, reading the said condition as enabling the Board to impose additional charges on consumers for not being ready "to avail supply" within the stipulated time at higher voltage even though the Board was not in a position to supply energy at the specified higher voltage, would make it unreasonable and arbitrary and violative of Article 14. In LIC of India and Another Vs. Consumer Education and Research center and Others, , the Supreme Court, after a review of its various earlier decisions, held as follows (at P. 1821 of AIR):

"In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e., fair, just and equitable, after taking objectively all the relevant options into consideration and in a

manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

19. There is no doubt that u/s 49 of the Electricity Supply Act, 1948 the Board has power to lay down the conditions of supply. In Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, , the Supreme Court held that the Board had the power unilaterally to alter the conditions of supply including the power to alter unilaterally the supply at a particular voltage. The Supreme Court rejected the contention advanced on behalf of the consumers that it was not open to the Board to direct the existing consumers to take the supply at higher voltage than the voltage at which they were receiving the supplies. The Supreme Court also held that if the consumer had to receive power at a higher voltage and if he wanted to utilise at a lower voltage, it would be his responsibility to install equipments for stepping down the power from high voltage to low voltage. It is in exercise of the power conferred on the Board by that Section 49 that the new condition (1) was introduced by B. P. Ms. No. 607 dated 21-7-1981 fixing the voltage at which supply had to be availed by H. T. consumers depending on their contracted demand. Condition (1) also required that H. T. consumers who were availing supply at the voltage less than the specified therein had to make necessary arrangements for changing their supply system so as to avail supply at the specified voltages. If any consumer failed to do so, it would attract additional charges for low voltages. Now this new condition (1) was introduced by the Board unilaterally. Time for making necessary arrangements to receive supply at the specified higher voltages by the consumers was also unilaterally fixed by the Board at six months without taking into consideration the problems and difficulties that may be faced by any particular consumer in view of the circumstances peculiar to such consumer. It is here that the question of the Board acting reasonably and fairly in unilaterally altering the conditions of supply arises. The observations of the Supreme Court in LIC of India and Another Vs. Consumer Education and Research center and Others, , that every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest are attracted to the Board in the exercise of its power unilaterally to alter the conditions of supply. The Board is undoubtedly a public service corporation and not a trading corporation as observed by the Supreme Court in the Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., . Therefore, the new condition (1) has to be interpreted reasonably and fairly so that it will not be hit by Article 14 of the Constitution. We find that the Supreme Court virtually accepted this position in Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, when it held that "after all the respondent-Board is an authority under a Statute and if the appellants are able

to satisfy the authority that the time of six months in the context of the circumstances when this notification was issued was not reasonable it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings" and that it was "also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate." The Supreme Court particularly referred to the case of A. P. Paper Mills wherein it was specifically alleged that in spite of the fact that it had installed a transformer, the Board could not lay down the lines as there was some injunction issued against the Board when the work for laying the lines started and that still, although, the Board was not in a position to supply the power at high voltage, the A. P. Paper Mills was compelled to pay the higher rate as it was not receiving power at the specified high voltage applicable to it.

20. Looked at from any angle, we are of the view that the imposition of additional charges on the petitioner under condition (1) for the period from 1-3-1983 to 21-3-1984 is unfair, unreasonable and arbitrary because admittedly the respondent-Board was not in a position to supply energy at 132 K.V. to the petitioner during that period. We do not purport to say that there were laches on the part of the Board. There may be very good reasons and real difficulties faced by the Board to complete all the erections, installations, laying the lines and arrangements necessary for the purpose of supplying energy to the petitioner at 132 KV. But the Board cannot be oblivious of the fact that the petitioner also must have faced similar problems and difficulties in acquiring the necessary transformers and other equipment -- it is stated at the Bar that the cost of all this was about a crore of rupees; and in transporting and installing the same and in completing the other works necessary for enabling it to receive the supply of energy by the Board at 132 KV. It would be unreasonable for the Board to ignore the petitioner's problems in getting ready for the change over. It cannot be assumed that the petitioner wantonly delayed in placing itself in a position to receive supply of energy at 132 KV. As already stated by us, it parted with Rs. 27.89 lakhs on 13-2-1982 itself towards "voluntary loan contribution" at nominal interest. We have also to observe that the Chief Electrical Inspector to the Government of Andhra Pradesh in his letter No. CEIG/EHT/727/81 dated 23-3-84 (signed on 27-3-84) addressed to the Superintending Engineer, Operation, A. P. State Electricity Board at Nizamabad stated as follows:

"Your attention is invited to this office letter cited (Lr. No. CEIG/EHT/727/81-2 dt. 29-3-82), wherein you were informed to take action to provision of cut out (in the form of 132 KV circuit Breaker) in the consumer's premises in accordance with Rule 58 read-with Rule 31 of Indian Electricity Rules 1956. But during my inspection of the consumer's 132/3.3 KV S. S. it is seen that you have not yet initiated any action in this regard.

You are requested to take necessary action in this regard immediately."

This clearly establishes that the Board did not activate itself to supply energy to the petitioner at 132 KV even by 23-3-1984. In the circumstances, whatever arrangements the petitioner made, it would not be in a position to avail such supply till the Board was ready, on its part, to supply energy at 132 KV.

21. In Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, , a H. T. consumer questioned the action of the Haryana State Electricity Board in not giving reduction in the demand charges because of inability of that Board to supply energy to its factory manufacturing alloy steel and steel castings as per its requirements due to the shortage of energy in the State of Haryana and power cuts imposed pursuant to the orders and directions of the State Government for maintaining the supply and securing equitable distribution of the energy. Clause 4(f) of the terms and conditions of supply made by that Board provided that "in the event of lock out, fire or any other circumstances considered by the supplier to be beyond the control of the consumer, the consumer shall be entitled to a proportionate reduction of demand charges/ minimum charges provided he serves at least 3 days" notice on the supplier for shut down of not less than 15 days duration. "On behalf of the consumer, it was contended that since the Board was not ready to serve the consumer and the consumer was ready to consume maximum electric energy, the former was not entitled to ask for any demand charge; on the other hand, on part of that Board it was asserted that it was entitled to assess and claim the full demand charge irrespective of the fact whether it was in a position to supply the energy according to the demand of the consumer or not. The Supreme Court answered as follows (Paras 7, 8 and 9):

"Such an extreme stand on either side appeared to us a bit puzzling and leading to inequitable results. The difficulty was not easy to solve. If we were to hold that for the Board's inability to supply a fraction of the consumers demand as per the contract it could claim only the energy charge and not the demand charge, it would have been very hard and injurious to the Board and the consumer would have unjustifiably got the supply at a very cheap rate. If on the other hand, we were to say that the consumer was liable to pay the entire demand charge as per the method of assessment provided in clause 4 of the tariff even when for no fault of it, it could get only a fraction of its demand fulfilled, resulting in its not being able to run the industry to its full capacity, it would be liable to pay a huge amount per month, and this will not only be uneconomical but would seriously affect its economic structure. But we were happy to find that a just, equitable and legal solution of the difficulty was provided during the course of the argument on either side and that is with reference to sub-clause (f) of clause 4 of the tariff. It is, therefore, not necessary to resolve the extreme stand taken on either side.

.....The circumstances of power cut which disabled the Board to give the full supply to the appellant because of the Government order u/s 228 of the 1910

Act, undoubtedly would be a circumstance which disabled the consumer from consuming electricity as per the contract. And this was circumstance which was beyond its control and could not be considered otherwise by the Board. It entitled the consumer to a proportionate reduction of the demand charges. This interpretation of sub-clause (f) of clause 4 of the tariff was accepted to be the correct, legal and equitable interpretation on all hands. In our opinion it is so. In a circumstance like this, it is plain, the obligation of the consumer to serve at least 3 days" notice on the supplier as per the latter part of sub-clause (f) was not attracted, as the requirement of notice was only in the case of shut down of not less than 15 days duration.

We are, therefore, of the view that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the" consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume."

A similar equitable interpretation has to be adopted on the facts of the present case, when the Board was unable to supply energy at 132 KV for whatever reason, till 9-11-1984, we have to hold that there was no failure on the part of the petitioner to make necessary arrangements for availing supply at 132 KV. till that date. The position would have been different if the Board was in a position to supply energy at 132 K V before the petitioner was ready to receive supply at 132 K V. In the view we have taken, it is not necessary to inquire into the question whether the Board was justified in extending the time allowed to the petitioner only by one year and whether it should have extended it up to 23-1-1984 as claimed by the petitioner.

22. Therefore, we have to be set aside the imposition of the additional charges on the petitioner from 1-3-1983 to 21-3-1984, particularly in view of the fact that for the subsequent period i.e., from 22-3-1984 to 9-1 1-1984 the respondent-Board itself had not levied additional charges on the very ground that the Board was not in a position to supply energy at 132 KV to the petitioner till 9-1 1-1984.

23. In the result, the writ petition is allowed to the extent of quashing the decision of the respondent-Board levying additional charges on the petitioner for the period from 1-3-1983 to 21-3-1984 as indicated by its Member Secretary in his letter dated 14-12-1988. No costs.

24. Petition allowed.