

Before Hon'ble N. C. Jain & Ashok Bhan, JJ.

PRITAM SINGH BIRRING AND OTHERS,—Petitioners.

*versus*

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4912 of 1987.

September 20, 1991.

*Indian Electricity Act, 1910—Electricity (Supply) Act 1948—Section 49—Constitution of India, 1950—Arts. 14, 19 and 38(2)—Supply of electricity—Urban and rural domestic consumers constitute a distinct and separate class—Requirement of energy for cities has different considerations than rural society—Board fixing hours of supply of energy differently to both groups—Action of the Board is neither discriminatory nor arbitrary and is necessitated by exigencies of the situation—It is only during peak paddy season that more energy is required for tubewells leading to less supply for rural domestic use—Board making every effort to make more energy available to rural domestic consumers—Plea of discrimination not established.*

*Held*, that the Board has not acted in a discriminatory manner, that is unequally or unequitiously in the supply of energy to domestic consumers of urban and rural areas. Urban domestic consumers constitute a class distinct from the rural domestic consumers. The requirement of energy for the cities is different keeping in view the requirements of commercial establishment such as shops, Banks, Cinemas and Institutions like Schools, Colleges, Patrol Pumps, Oil Depots, P&T Installations, Courts, Municipal Office, Corporations and Street Lighting. Apart from this, the energy is also required for bulk requirements such as Railways, Hospitals, Defence installations of strategic importance and Municipal Corporations etc. etc. Whereas the requirements in the rural society are different, that is, apart from domestic consumers, energy is required for tubewells rice shellers, flour mills and cold storages etc. Board supplied energy to the rural area through single phase supply for being utilised for domestic purposes and three phase supply to be used for tubewells/ agricultural purposes as well as for domestic use. The supply on three phase is for a limited period because of the difference in demand of supply of energy during the peak paddy season, that is, with effect from July to August of each year. At night, the Board supplies single phase energy and when there is single phase energy than the same cannot be utilised for any industry or tubewell. Single phase supply is given for domestic use and to restrict the supply of energy to the tubewells. The reason being that there is not enough energy available to be supplied to the tubewells round the clock. Supply of energy to the tubewells is at a flat rate assessment, that is, Rs. 19 per horse power and not on actual consumption

basis. Keeping in view that above factors, in our view, urban domestic consumers constitute a class distinct from the rural domestic consumers.

(Para 8)

*Held*, that the Board has not acted in an arbitrary manner in the distribution of supply of energy to the domestic consumers of urban and rural areas. Domestic consumers in urban areas are a class distinct from the domestic consumers of rural area. Because of the exigencies of the situation the supply of energy to the domestic sector in rural area is restricted in the particular period of the year i.e. during the paddy season when more energy is required for operating the tubewells. Otherwise the supply of energy to the rural and urban domestic consumers has been at the equal footing.

(Para 10)

*Held*, that the Board is making every endeavour to make more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers.

(Para 10)

*Held*, that the directive principles of State policy are not enforceable *per se* as has been provided in Article 37 of the Constitution. We have already held in the earlier part of this judgment that the Board has not acted either discriminatorily or arbitrarily in the distribution of energy amongst the urban and rural consumers. We have further held that the State has made every endeavour to make more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers. We have further noticed that the supply of energy to the rural domestic consumers has been almost 24 hours from March, 1988 to June, 1991. Under the circumstances, it cannot be held that the State has not made any endeavour to remove the inequalities existing between the people residing in rural and urban areas keeping in view the resources of the State.

(Para 11)

*Civil Writ Petition under Articles 226 of the Constitution of India praying that this Hon'ble Court would be pleased to :—*

- (i) send for the relevant record of the case;
- (ii) and after perusal of the record to issue Writ in the nature of mandamus directing the respondents to treat the Rural and the Urban residents at par and to provide and supply electricity for domestic use on equal basis and not to discriminate between the two;
- (iii) issue any other writ, order or directions which this Hon'ble Court deems just and proper for the decision of the writ petition;
- (iv) exempting the petitioners from filing certified copies of the documents on which Annexure P1 is based.

(v) *dispense with the issue and cause advance notices of motion to the respondents as required under the High Court Rules and Orders (Writ Jurisdiction Rules) Vol. V.*

(vi) *To award the costs of the petition to the petitioners.*

*It is further prayed that during the pendency of the writ petition, the Respondents may kindly be directed to supply to the Rural areas electricity equal to the Urban areas for domestic use.*

Joginder Singh, Advocate, for the Petitioner.

H. S. Toor, Advocate with J. S. Toor, Advocate and Jasbir Singh, Advocate, for the Respondents.

#### JUDGMENT

*Ashok Bhan, J.*

(1) This judgment shall dispose of two civil writ petitions No. 4912 and 5222 of 1987 as common questions of law and fact are involved in both the cases.

The facts are being taken from C.W.P. No. 4912 of 1987.

(2) The point involved in this writ petition is as to whether the respondents-State and the Punjab State Electricity Board can treat unequally the domestic consumers-living in urban and rural areas in the supply of electric energy? According to the allegations contained in the writ petition, the Punjab State Electricity Board (hereinafter referred to as the Board) has been constituted under the Electricity (Supply) Act, 1948 (for short the supply Act) and has been invested with the powers of licensee as contemplated under the Indian Electricity Act, 1910, (for short the Act). No other person except the Board has the power to generate or distribute the electricity; that the respondent-Board while arranging the distribution of supply has divided the consumers into three groups:—

- |                     |   |       |
|---------------------|---|-------|
| (i) Night Group.    | } | Rural |
| (ii) Day Group.     |   |       |
| (iii) City Feeders. |   |       |

Supply is given to all these three categories according to the instructions issued by the Board from time to time. In order to

regulate the supply to the rural people, the Board has given further directions for (i) domestic purposes known as single phase supply, (ii) and for Agricultural/tubewell purposes known as three phase supply and the supply to the urban areas is given on the city Feeders. It has been alleged in the petition that rural population is given only 12 to 14 hours supply of electricity for domestic use whereas urban population is given 20 to 24 hours electricity supply for domestic use. In order to prove this fact, the petitioners have attached a chart Annexure P1 with the writ petition. In this chart, supply of energy to rural and urban areas as per directions given by the Board has been shown for seven days i.e. from 26th June, 1987 to 1st July, 1987. It has further been alleged in the petition that the Board has issued instructions for distribution of supply to different feeders between the rural and urban people in a discriminatory manner and in utter disregard and clear violation of Articles 14 and 19 of the Constitution of India which has added to the woes of rural population as against the people living in the urban area; that under Section 22 B of the Act, State Government has been vested with the powers to control the distribution and consumption of energy. Under section 49 of the Supply Act, the Board has been given the powers for fixing the tariff and conditions for the supply of electricity. It is mentioned in sub-section (4) of section 49 of the Supply Act that the Board shall not show undue preference to any person in fixing the tariff and condition of supply of electricity; that the Government as well as the Board are acting in violation of these two statutory provisions of the Supply Act; that the respondent-Board is acting in violation of the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution of India wherein it has been enjoined upon the State to make endeavour to minimise the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations; that the functioning of the respondent-Board is urban oriented and that the Board considers the rural growth and providing of facilities to them as a liability and burden.

(3) The respondent-Board filed its written statement on 24th September, 1987. Since it was lacking in certain particulars, it sought permission of the Court to file the amended written statement. The permission was granted on 25th April, 1988 and amended written statement dated 29th February, 1988 was allowed to be placed on record.

(4) The stand taken by the Board in its amended written statement is that it is bound to supply all the available electricity

in a just and equitable manner to different classes of consumers; that the petitioners who are residents of rural area is a distinct class namely rural consumers as against another distinct class of urban consumers; that the availability of power being less than the demand the same cannot be uniformly supplied to its various categories of consumers; that in fact, the Board has always given preferential treatment to the agriculture sector of the State but at times due to non availability of the required load of energy and due to paucity of funds, the Board is supplying energy to the rural feeders and urban feeders differently. Energy to the rural feeders is being supplied on the same lines which cater to both types of consumers i.e. tubewell owners as well as to domestic users. Whenever three phase energy is supplied on the rural feeders, it is utilised for tubewells as well as for domestic purposes such as lighting and operating other household gadgets and also for rural based industries such as flour mills, rice shellers, cold storages, lathes, saw mills, foundaries etc. During single phase supply hours, energy cannot be utilised for any other industry or tubewell except for domestic use. As against this, the urban power load is supplied through urban feeders and is used for city domestic loads such as lights, fans etc. commercial establishments such as shops, Banks, Cinemas, Petrol Pumps, Oil depots, institutions like Schools, Colleges P&T installations, Courts, Municipal Office, street lighting etc. Besides this, the energy is also required for bulk requirements such as Railways, Hospitals, Defence installations (Military and Air Force) of strategic importance and Municipal Corporations etc. etc. Keeping in view the availability of the energy, the Board distributes the same in a fair and just manner after taking into consideration the importance of requirements of different consumers. The power is distributed amongst various categories of consumers depending upon their priority needs, consumption requirements and prevailing loading conditions in the power supply net work. Rural feeders are given three phase supply for 10/12 hours daily in view of their enormous demand and single phase supply for the rest of the night hours. An additional affidavit was filed by the respondent-Board on 19th August, 1991 during the course of arguments which was allowed to be placed on record after notice to the counsel for the petitioners whereby a statement has been placed on record showing total monthly energy consumption in Punjab for the period with effect from April 1987 till July 1991,—vide Annexure R8/1. The comparative statement in Annexure R/8 of supply of energy between the rural domestic consumers and urban domestic consumers has been shown. It shows that the Board has bridged the gap of

availability of energy in respect of rural domestic use *vis-a-vis* urban domestic use. The supply of energy to the rural domestic consumers has been almost 24 hours a day from March 1988 to June, 1991. The short fall of energy to the rural area, if at all during **this period has occurred, it pertains to the months of June, July and August** of each year, that is, during the paddy seasons because of the consumption of the electricity by the tubewells operated in the rural sectors. It has further been stated that Board has increased the supply of energy both from its own sources as well as by purchasing the energy worth crores of rupees per day from outside sources since June, 1987 that the Board is making every endeavour to make more energy available to the rural domestic consumers and to bring them at par with urban domestic consumers.

(5) We have heard the learned counsel for the parties at length. Shri J. S. Toor, learned counsel appearing for the petitioners, has argued that domestic consumers-in rural and urban areas are one category and the Board cannot act in a discriminatory and arbitrary manner while fixing the hours of supply to the domestic consumers of urban and rural areas. The following judgments were cited by him to show that an authority within the meaning of Article 12 of the Constitution cannot act in a discriminatory or arbitrary manner in the discharge of its executive actions and, if it does, then the same is violative of Article 14 of the Constitution of India and such an action is liable to be struck down being violative of equality clause enshrined in Article 14 of the Constitution :—

*Bidi Supply Co. v. Union of India and others* A.I.R. 1956 S.C. 479, *The Adoni Cotton Mills Ltd. etc. etc. v. The Andhra Pradesh State Electricity Board and others* A.I.R. 1976 Supreme Court 2414, *State of U.P. and others v. M/s Hindustan Aluminium Corporation and others*, A.I.R. 1979 Supreme Court 1459, *Ramana Dayaram Shetty v. The International Airport Authority of India and others* A.I.R. 1979 Supreme Court 1628, *M/s Kasturi Lal Lakshmi Reddy etc. v. The State of Jammu and Kashmir and another* A.I.R. 1980 Supreme Court 1992. *Central Inland Water Transport Corporation Ltd. and another etc. etc. v. Brojo Nath Ganquly and another* A.I.R. 1986 Supreme Court 1571 and *M/s Indian Metals and Ferro Alloys Limited and another v. State of Orissa and another*, A.I.R. 1987 S.C. 1727.

(6) As against the above, Shri H. S. Toor, Senior Advocate, learned counsel appearing for the Board, has argued that the Board has not acted either discriminatorily or arbitrarily in its actions, rather it has distributed the available energy amongst various categories of consumers in a just and quitable manner and that the domestic consumers of rural area are a distinct class as against another distinct class of domestic urban consumers. The availability of energy being less than the demand, the same could not be supplied to various categories of consumers uniformly.

(7) We have considered the submissions made by the learned counsel for the parties. Article 14 of the Constitution provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 14 of the Constitution has been the subject matter of judicial interpretation by various High Courts and the Supreme Court of India. There are varied dimensions of this article and the apex Court has dealt with various aspects of this article in the judgments which were cited by the counsel appearing for the petitioners. From a perusal of these judgments, it is clear that Article 14 forbids discrimination but the same is not an absolute forbiddance. The State or Executive can discriminate on the basis of reasonable classifications where the classifications making the differential fulfils two conditions namely; (i) that the classification is founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and; (ii) that, that differential has a rational relationship to the object sought to be achieved by the impugned legislative or executive action. Under the circumstances, what has to be examined in this case is as to whether the urban domestic consumer/s is/are a class distinct from the rural domestic consumers and as to whether the Board has acted in a discriminatory manner in the supply of energy to these consumers ?

(8) We have examined the whole record carefully and in our opinion, the Board has not acted in a discriminatory manner, that is unequally or unequally in the supply of energy to domestic consumers of urban and rural areas. Urban domestic consumers constitute a class distinct from the rural domestic consumers. The requirement of energy for the cities is different keeping in view the requirements of commercial establishments such as Shops, Banks, Cinemas and institutions like Schools, Colleges, Petrol Pumps, Oil Depots, P&T Installations, Courts, Municipal Office, Corporations

and street lighting. Apart from this, the energy is also required for bulk requirements such as Railways, Hospitals, Defence installations of strategic importance and Municipal Corporations etc. etc. Whereas the requirements in the rural society are different, that is, apart from domestic consumers, energy is required for tubewells, rice shellers, flour mills and cold storages etc. Board supplies energy to the rural area through single phase supply-for being utilised for domestic purposes and three phase supply to be used for tubewells/agricultural purposes as well as for domestic use. The supply on three phase is for a limited period because of the difference in demand of supply of energy during the peak paddy season, that is, with effect from July to August of each year. At night, the Board supplies single phase energy and when there is single phase energy then the same cannot be utilised for any industry or tubewell. Single phase supply is given for domestic use and to restrict the supply of energy to the tubewells. The reason being that there is not enough energy available to be supplied to the tubewells round the clock. Supply of energy to the tubewells is at a flat rate assessment, that is, Rs. 19 per horse power and not on actual consumption basis. Keeping in view that above factors, in our view, urban domestic consumers constitute a class distinct from the rural domestic consumers.

(9) In order to substantiate the plea of discrimination, the petitioners have placed on record a chart Annexure P/1 wherein Supply Position of energy to the rural and urban area has been given from 26th June, 1987 to 1st July, 1987, that is, only for six days. During this period, admittedly supply of energy to the rural sector was between 12 to 14 hours as against 24 hours supply to the urban sector. The Board in its reply has taken the plea that the data of supply position for seven days given in Annexure P/1 is not sufficient to establish the plea of discrimination. The Board placed on record an additional affidavit at the asking of the Court on 19th August, 1991 whereby a statement has been placed on record showing the total consumption of energy in Punjab for the period with effect from April 1987 to July 1991 as Annexure R8/1. The comparative statement of Annexure R8/1 of supply of energy between rural domestic consumers and the urban domestic consumers has been shown. A perusal of Annexure R8/1 shows that supply of energy to the rural domestic consumers during the period with effect from March 1988 to June 1991 has been almost 24 hours. We accept the contention of the learned counsel appearing for the Board that the data supplied.—*vide* Annexure P/1 for the period with effect from 26th June, 1987 to 1st July, 1987 is not sufficient to establish the plea of discrimination. The comparative statement



of supply of energy between rural domestic consumers and urban domestic consumers given in Annexure R3/1 shows that the Board is not acting in any discriminatory manner and further that the Board is making endeavour to made more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers. It can further be noticed from this annexure that the shortfall of energy to the rural area if at all has been during the months of June, July and August of each year, that is, during the paddy season because of the consumption of electricity by the tubewells operated in the rural sector.

(10) That brings us to the next question as to whether the Board has acted in an arbitrary manner in determining the hours of supply of energy differently to the urban and the rural domestic consumers. Apex Court in *E. P. Royappa v. State of Tamil Nadu* (1), added a new dimension to Article 14 and held that where the executive action is arbitrary, it is implicit in it that it is unequal and liable to be struck down being violative of Article 14, that Article 14 strikes at arbitrariness in State actions and ensures fairness and equality of treatment to its citizens. This very concept has been repeated in *Smt. Maneka Gandhi v. Union of India and another* (2), and *Ramana Dayaram Shetty v. The International Airport Authority of India* (3), and *Ajay Hasia, etc. v. Khalid Mujib Sehravardi and others etc.* (4), the judgments of the Supreme Court on which reliance has been placed by the learned counsel appearing for the petitioners. We have examined this aspect of the argument of the learned counsel appearing for the petitioners as well as in depth on the facts available on the record. In our opinion, the Board has not acted in an arbitrary manner in the distribution of supply of energy to the domestic consumers of urban and rural areas. Domestic consumers in urban areas are a class distinct from the domestic consumers of rural area. Because of the exigencies of the situation the supply of energy to the domestic sector in rural area is restricted in the particular period of the year i.e. during the paddy season when more energy is required for operating the tubewells. Otherwise the supply of energy to the rural and urban domestic consumers has been at the equal footing. Petitioners have placed on record the date of supply of energy for a period of six

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- (1) A.I.R. 1974 S.C. 555.
  - (2) A.I.R. 1978 S.C. 597.
  - (3) A.I.R. 1979 S.C. 1628.
  - (4) A.I.R. 1981 S.C. 487.

days only i.e. from 26th June, 1987 to 1st July, 1987 whereas the respondent-Board in its additional affidavit filed on 19th August, 1991 has placed on record Annexure R8/1 showing the total monthly energy consumption in Punjab for the period with effect from April, 1987 to July, 1991. From March, 1988 to June, 1991 the supply of energy to the rural domestic consumers has been for 24 hours a day like the consumers in the urban area. The rainfall during the paddy season of 1987 was not adequate and because of the consumption of the electricity by the tubewells operated in the rural sector, the supply of energy to the domestic consumers was for lesser number of hours. During next three years i.e. from March, 1988 to June, 1991 the supply of energy to the rural domestic consumers has been at par with the urban domestic consumers which shows that the Board is making every endeavour to make more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers. It is also clear from the perusal of the written statement of the Board that the Board from its own sources has increased the production of electric energy manifolds and has been purchasing energy from other States during the peak paddy season. Learned counsel appearing for the Board has further stated that energy endeavour is being made to make more energy available to the rural sector including the domestic consumption of that area and to bring them at par with their counterparts in the urban areas. Such being the position, it cannot be held that the Board has acted in an arbitrary manner in any sense of the term in supply of energy to the rural domestic and urban domestic consumers.

(1) The next submission of the learned counsel appearing for the petitioners is that the Directive Principles of State Policy contained in Part-IV of the Constitution of India, although are not enforceable by any Court but nevertheless they are fundamental in the governance of the country and it was the duty of the State to apply these principles in making laws in accordance with the Directive Principles. Article 38 of the Constitution provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It is further provided in sub-clause (2) of this Article that the State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. It was argued that the State

has failed to act in accordance with the directions given in Article 38 of the Constitution and has done little to eliminate inequalities in the facilities and opportunities provided to the groups of people residing in the urban and rural areas. We do not find any substance in this submission of the learned counsel appearing for the petitioners either. Directive Principles of State Policy are not enforceable *per se* as has been provided in Article 37 of the Constitution. We have already held in the earlier part of this judgment that the Board has not acted either discriminatorily or arbitrarily in the distribution of energy amongst the urban and rural consumers. We have further held that the State has made every endeavour to make more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers. We have further noticed that the supply of energy to the rural domestic consumers has been almost 24 hours from March, 1988 to June, 1991. Under the circumstances, it cannot be held that the State has not made any endeavour to remove the inequalities existing between the people residing in rural and urban areas keeping in view the resources of the State.

(12) No other point was raised.

(13) For the reasons recorded above, we find no merit in this writ petition and the same is dismissed with no order as to costs.

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R.N.R.

Before Hon'ble N. K. Sodhi, J.

STATE OF PUNJAB,—Petitioner.

versus

SHRI RAM MURTI,—Respondent.

Civil Writ Petition No. 8845 of 1989.

May 15, 1991.

*Industrial Dispute Act, 1947—Ss. 2(oo), (bb), 25(B) and 25-F—Termination on non-renewal of contract of employment—Termination on account of unfair labour practice neither pleaded nor proved—Labour Court not recording any finding that post against which workman terminated was continued—Compliance of S. 25-F not attracted—Mere fact that another worker was appointed after two months in place of terminated employee will not entitle him for relief of reinstatement—On facts found that the other workman was also terminated for want of sanction of the post—Case falls u/s 2(oo) (bb)—Reinstatement quashed.*