

CIVIL MISCELLANEOUS

Before D. K. Mahajan and P. C. Pandit, JJ.

KARTAR SINGH AND OTHERS,—*Petitioners*

versus

THE PUNJAB STATE ELECTRICITY BOARD & ANOTHER,—*Respondents.*

Civil Writ No. 2988 of 1968

May 7, 1969

Electricity (Supply) Act (LIV of 1948)—Section 49—6th Schedule Para 1—Introduction of new tariff for electricity consumers—Whether permissible—Electricity Board—Whether can change the mode of assessment of the electricity charge.

Constitution of India. (1950)—Article 14—Fixing flat rate electric tariff per horse power of the engine of the tubewell owners irrespective of actual consumption of electricity—Whether discriminatory and hit by Article 14.

Held, that according to section 49 of the Electricity (Supply) Act, 1948, the Board is authorised to supply electricity upon such terms and conditions as it thinks fit and can, for that purpose, frame uniform tariffs. This power is subject to the provisions of the Act and the regulations if any made in that behalf. There is no prohibition under section 49 in changing the tariff of the old consumers. The various factors mentioned in sub-section (2) of section 49 of the Act, which the Board has to take into consideration, while fixing the tariffs, namely, the co-ordinated development of the supply and distribution of electricity in the most efficient and economical manner, the simplification and standardisation of methods and rates of charges for such supply and the extension and cheapening of supply of electricity to sparsely developed areas are not from the very nature of things static. They go on changing and, consequently, the tariffs have also to undergo change taking into consideration the past experience. Ample safeguards have, however, been given in the section itself to prevent the Board from enhancing the tariff in an arbitrary or illegal manner or showing any undue preference to any person. (Para 6)

Held, that under para 1 of 6th Schedule of the Act, the Electricity Board can adjust its charges for the sale of electricity, whether by enhancing or reducing them so that its clear profit in any year of account would not, as far as possible, exceed the amount of reasonable return. The Board can, therefore, enhance the charges and the only limitation is that its profit should not, as far as possible, exceed the amount of reasonable return. The Board can, therefore, increase not only the rates of supply of electricity originally fixed, but also completely change the mode of assessment of the electricity charges. (Paras 11 and 13)

Held that the Electricity Board has the right to fix the different tariffs for different categories of consumers. The tube-well owners are a category in themselves and other categories of consumers are not similarly situated as the tube-well owners. There is nothing unreasonable in classifying the tube-well owners as a separate category. Hence the fixing of flat rate electric tariff per horse power of the engines of tube-well owners irrespective of actual consumption of electricity is not discriminatory and is not hit by Article 14 of the Constitution of India. (Paras 14 and 15)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned notice dated 8th August, 1968, Annexure 'A' and Bills Annexures B-1 to B-7 and restraining the respondents from charging for the supply of electricity from the petitioners on the basis of new tariff.

HARBANS LAL, ADVOCATE, for the petitioners.

H. L. SIBAL, SENIOR ADVOCATE, with S. C. SIBAL, ADVOCATE, for the respondents.

JUDGMENT

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Kartar Singh and six others, residents of village Mansa Khurd, district Bhatinda, challenging the increase in the rates for the supply of electricity to their tube-wells for agricultural purposes made by the Punjab State Electricity Board, respondent No. 1, hereinafter called the Board.

(2) The petitioners own agricultural lands in their village. They have installed tube-wells thereon for the purpose of irrigation, as the supply of water from the canal was inadequate. The said tube-wells were run by electric motors and electricity was to be supplied by respondent No. 1. The electric motors of some of the petitioners were of 25 Horse Power each and of others 20 Horse Power each. The petitioners got their connections from respondent No. 1 for the supply of electricity with effect from 4th of December, 1967. Respondent No. 1 had fixed the schedule of electricity tariff with effect from 1st of April, 1966, and prescribed different rates for the various categories of consumers, for example, large industries, medium industries, small industries, seasonal industries, agricultural pumping supply and cottage industries (rural industries). According to the said schedule, two types of tariffs were prescribed for each category, that is, Demand Charges and Energy Charges. The tariff applicable to the category of agricultural pumping supply applied to the tube-wells

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of the petitioners and according to them, the petitioners were to pay the following charges:—

(a) Demand Charges	Re. 1 per Horse Power per month.
	<i>plus</i>
(b) Energy Charges :	
(i) Up to first 1500 Units (Killo Watt Hours) per month.	9.38 Paise per Unit (Killo Watt Hours).
(ii) For all in excess of 1500 Units (Killo Watt Hours) per month.	7.81 Paise per Unit (Killo Watt Hours).

(3) The said tariff was, according to the petitioners, arbitrarily enhanced by respondent No. 1 with effect from 1st of July, 1968, and according to that, the consumption of electricity by the tube-wells of the petitioners would be charged at a flat rate at the rate of Rs. 9 per Horse Power per month. The new tariff was fixed without taking into consideration the actual consumption of energy during the month concerned, and that had resulted in great injustice and hardship to the petitioners. The tube-wells of the petitioners were installed only for the purpose of irrigation and supply of water to the agricultural lands and in the very nature of things the water supply was needed only during some period of the year and for the remaining period the tube-wells remained idle and no electricity was consumed. On the basis of the new tariff, the petitioners had to pay huge amounts every month irrespective of the actual consumption of electricity by them. The charges were out of all proportions with the electricity consumed. That led to the filing of the present writ petition.

(4) Learned counsel for the petitioners, in the first instance, contended that respondent No. 1 was not competent under the Electricity (Supply) Act, 1948, hereinafter called the Act, and the Rules, to introduce the new tariff with regard to the petitioners, because at the time of giving the connections to the tube-wells, it undertook to supply electricity on the basis of the then existing tariff. According to the new tariff, the charges were to be levied not on the

basis of the consumption of electricity, but on the basis of the Horse Power of the electric motor installed at the tube-well. This enhancement in the tariff was made in an arbitrary manner and it was contrary to law.

(5) There is no merit in this contention. The tariff had been changed under section 49 of the Act, which reads thus—

“49. Provision for the sale of electricity by the Board to persons other than licensees—

- (1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes and such supply frame uniform tariffs.
- (2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:—
 - (a) the nature of the supply and the purposes for which it is required ;
 - (b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee ;
 - (c) the simplification and standardisation of methods and rates of charges for such supplies;
 - (d) the extension and cheapening of supplies of electricity to sparsely developed areas.
- (3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

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(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person."

(6) According to this section, the Board is authorised to supply electricity upon such terms and conditions as it thinks fit and could, for that purpose, frame uniform tariffs. This power was subject to the provisions of the Act and the regulations if any made in that behalf. In sub-section (2), certain factors have been enumerated which will be taken into consideration by the Board, while fixing the uniform tariffs. Under sub-section (3), the Board is empowered to fix different tariffs for the supply of electricity, having regard to the geographical position of any area, the nature of the supply and the purpose for which the supply was required and any other relevant factors. According to sub-section (4), the Board is prohibited from showing undue preference to any person in fixing the tariff and the terms and conditions for the supply of electricity. It is true that the petitioners were given connections at a time when the tariff was different, but there was no prohibition under section 49 in changing the tariff of the old consumers. If the argument of the learned counsel for the petitioners was to be accepted, then it has to be held that the rates once fixed can never be changed, but that would be completely contrary to the language employed in section 49. The various factors mentioned in sub-section (2), which the Board has to take into consideration, while fixing the tariffs, namely, the co-ordinated development of the supply and distribution of electricity in the most efficient and economical manner, the simplification and standardisation of methods and rates of charges for such supply and the extension and cheapening of supply of electricity to sparsely developed areas, are not from the very nature of things static. They go on changing and, consequently, the tariffs have also to undergo change taking into consideration the past experience. Ample safeguards have however been given in the section itself to prevent the Board from enhancing the tariff in an arbitrary or illegal manner or showing any undue preference to any person.

(7) Learned counsel for the petitioners submitted that in the old section 49, which was later on substituted with retrospective effect by section 11 of the Electricity Supply (Amendment) Act, 1966 (Act No. 30 of 1966), the Board was authorised to supply electricity to any person upon such terms and conditions as it may *from time to time* fix. In the new section, the words "from time to time" have been

omitted and that omission, according to the learned counsel, showed that the Legislature wanted the Board not to change the tariff once fixed by the Board.

(8) There is no force in this submission also. Old section 49 reads as under:—

“Provision for the sale of electricity by the Board to persons other than licensees—

Subject to the provisions of this Act and of any regulations made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purpose for which it is required ;

Provided that in fixing any such terms and conditions the Board shall not show undue preference to any person.”

(9) The new section 49, reproduced earlier, is certainly more exhaustive than the old one. Apart from employing the language of the old section, sub-sections (2) and (3) have also been added in the new section. The omission of the words “from time to time” does not in my opinion make any difference at all and as a matter of fact, they had become redundant after the addition of the two sub-sections and the slight change in the language used in sub-section (1).

(10) In the return filed by the respondent, the reasons for making the change in the tariff have been explained. They are as follows—

“The tariff has been changed not arbitrarily, but for various sound reasons which are given below:—

The Punjab State Electricity Board realised that quite an appreciable revenue comes from this source, i.e. the source of supply of electricity to the agriculturists, who have got tube-wells installed. The original tariff was very old. It was altered to some extent on the 1st of April, 1966. The Punjab State Electricity Board found that there were a lot of practical difficulties even in continuing the tariff of 1st April, 1966, in respect of

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agriculturists who had installed tube-wells. One of the reasons was that the tube-wells in Punjab were far scattered and had created a problem to employ officials for the purpose of taking meter reading. But still a very difficult problem was to find out a correct meter reading of electricity consumed by the agriculturists who had tube-wells. Most of the electric energy was being stolen and this practice was very prevalent in some Divisions and less in others which showed variance of revenue on that account. The best of coercion and persuasion did not bring consumers of this category to appreciate their duty to pay correctly the electrical energy consumed by them. It was also noticed in some cases that theft of energy was practised directly from the meters or by some other means with the result that although a lot of electrical energy was consumed the meter reading showed a very insignificant consumption. In some cases, there was an attempt to catch the delinquent and quite often there have been even violent attacks on the staff since the agriculturists did not like the staff to interfere with the illegal use of electricity which they were making. The assistance of police and civil authorities was also taken, but even in those cases some time an awkward position resulted. The staff of the electricity department had been attacked on many occasions. In some cases it was found that even members of the staff colluded with the agriculturists to give them undue gain. It was, therefore, thought by the Punjab State Electricity Board, that the procedure should be simplified with a particular view to avoid theft of energy. The new tariff system also meant a lot of economy to the Punjab State Electricity Board. The new tariff system will do away with the installation of metric equipment at each tube-well. Since the reading of meters would not be there in the case of tube-wells, the staff also shall be reduced to that extent. Theft of energy would disappear and the system evolved is such that the agriculturists are entitled to use the electric motor of a particular Horse Power which they need for their own land, and they shall pay for the classification in proportion to the Power of

the electric motor which they keep. This flat rate system was introduced after considering the various pros and cons in particular economy to be effected and the theft of energy to be avoided. This system was tried initially from 1st January, 1968, in Tarn Taran (Operation Division) of Amritsar Circle and Ludhiana Suburban (Operation Division) of Ludhiana Circle and the experience had worked well. It is on this ground that the system had been introduced throughout the State. The new tariff has been fixed after considering all the economic conditions in this connection and a very fair rate had been fixed. Actually the agriculturist is competent to use his electrical motor for even 24 hours and he will still pay the rate fixed under the new tariff. It has also been thought that this tariff will give an incentive to neighbouring farmers to join together and pool their resources to get only one common tube-well instead of individual tube-wells. This would mean saving of the investment also by the farmers. The farmers also can save meter rent. This system will do away with all meter disputes. The breaking of seals of meters, etc., would also be eliminated. This will do away with thefts of electric energy and unscrupulous agriculturists and members of the staff would not be allowed to reap the benefit of their illegal activities. This will also reduce the members of the staff and would thus be economical to the Board. It is worked out that the savings of the Board would be roughly to the extent of various lacs because of non-supply of metering equipments and establishment charges. It is also expected that this will also increase the all round efficiency. It may also be mentioned that the theft of electricity and electric energy had resulted in a great loss to the Punjab State Electricity Board and unless this problem was completely solved there was a great danger that the loss to the Board may become unbearable. There was a reason why the tariff has been changed in respect of the tube-wells which are run by electric energy supplied by the Board. This reason has been mentioned above already. For the other categories, there was no need to change the tariff."

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It would thus be seen that the change was not made in an arbitrary manner as alleged by the petitioners.

(11) Learned counsel for the petitioners also argued that in para 1 of the 6th Schedule to the Act, the Board could only increase the rates of supply of electricity originally fixed, but could not completely change the *mode of assessment* of the electricity charges.

(12) There is no substance in this argument as well. The relevant part of the said para reads—

“Notwithstanding anything contained in the Indian Electricity Act, 1910 (9 of 1910) except sub-section (2) of section 22-A and the provisions in the licence of licensee, the licensee shall so adjust his charges for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return.”

(13) Under this para, the licensee, that is, the Board could adjust its charges for the sale of electricity, whether by enhancing or reducing them so that its clear profit in any year of account would not, as far as possible, exceed the amount of reasonable return. The Board could, therefore, enhance the charges and the only limitation was that its profit should not, as far as possible, exceed the amount of reasonable return. It is not the case of the petitioners in the writ petition that by this enhancement in the rates the profits of the Board would cross that limit.

(14) It was then argued by the learned counsel that even if it was assumed that the Board could enhance the tariff originally fixed, it had in doing so contravened sub-section (4) of section 49 of the Act. It had, according to the learned counsel, in fixing the new tariff, showed undue preference to other categories of consumers of electricity as against the tube-well owners like the petitioners. The new tariff was thus discriminatory and had hit the fundamental rights of the petitioners as guaranteed by Article 14 of the Constitution. All other categories were being charged various rates but on the basis of actual consumption of the electricity, whereas the petitioners had to pay on the basis of Horse Power of the electric motor installed at the tube-wells. These charges would be out of all proportions with the consumption of the electricity.

(15) This argument again is without any merit. It was conceded by the learned counsel that the Board had the right to fix different tariffs for different categories of consumers. But while making such categories, according to the learned counsel, undue discrimination had been made against the tube-wells owners, as mentioned above. It was further conceded by him that there was no discrimination shown by the Board in fixing the tariff for the different tube-well owners *inter se*. After this concession having been made by the learned counsel, it does not stand to reason how this new tariff was hit by Article 14 of the Constitution. The Board had made various categories of consumers of electricity. The other categories, it could not be argued, were similarly situated like the tube-well owners. It has not been shown by the learned counsel as to how this classification was in any way unreasonable. Under the old rates, the petitioners had to pay fixed charges at the rate of Re. 1 per Horse Power and also on the actual consumption of electricity. Under the new tariff, one flat rate has been fixed. That has been so done after taking into consideration that the tube-wells may not be working for a particular part of the year, but even if the petitioners work the tube-wells for 24 hours yet the Board will charge them the same flat rate. Under the new system, the tube-well owners can use their tube-wells whenever they need water and they can also supply water to the neighbouring agriculturists who have no tube-wells. This was considered by the Board to be a good scheme, as it would mean less expense to the tube-well owners who can even charge their neighbours for the water supplied to them. In cases where there was canal water supply in addition to the tube-wells, the consumers could have an electric motor of a lesser Horse Power.

(16) This apart, the supply of electric energy by the Board was a matter of contract. If a person was not interested to have the supply at the tariff framed, he was at liberty not to have it. But in case he wanted the supply of electricity, he was bound to comply with the conditions of supply and the tariff which was fixed by the Board from time to time. The petitioners had also, similarly, entered into an agreement with the Board and had signed the agreement in which it was mentioned:

“We hereby further agree to pay for the said supply in accordance with the relevant tariff and also to pay for all such other proper charges as may become due by us to the supplier from time to time at rates laid down in the Standard Schedules of Service and General Charges prescribed by the Supplier, and we further agree that we will,

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if and when required by the Supplier to do so, lodge with the Local Office of the Board a deposit calculated as prescribed in the Abridged Conditions of Supply prescribed by the Supplier. And we hereby declare that the said conditions of supply including Schedules of Tariff, Service Charges and General Charges have been perused by us and we agree to be bound by them as also the provisions of clause VI of the Schedule to the Indian Electricity Act, 1910."

(17) In Clause 31 of the Abridged Conditions of Supply prescribed by the Supplier, it is clearly stated thus—

"Rights of Board to Revise Schedules of Tariffs and Charges and Conditions of Supply.

Subject to clause 30 above, the Board reserves the right at any time to amend, cancel or add to, any of the Schedules and Conditions."

(18) No writ lies for the breach or enforcement of any contract. The aggrieved party can have recourse to a civil suit.

(19) Learned counsel for the petitioners referred to Annexure 'D' filed with the replication, which was a notice issued by the Sub-Divisional Officer, Suburban Sub-Division, Bhatinda, to the Sarpanch of the petitioners' village on 18th of September, 1968, informing him that the electric supply of his village would remain closed on Tuesday and Friday of every week from 8.00 a.m. to 6.00 p.m. On the basis of this notice, learned counsel submitted that it was wrong, as stated by the respondents, that the petitioners were entitled to work their tube-wells without any restrictions for all the 24 hours. Under the new tariff, charges would be payable by the petitioners though they would not be able to work their tube-wells for two days in a week.

(20) Counsel for respondent No. 1 contended that although he had not been supplied a copy of that Annexure, but he undertakes on behalf of his client that this restriction was only a temporary measure and would not be enforced as a permanent feature.

(21) In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to costs.

D. K. MAHAJAN, J.—I agree.

R. N. M.