Kanoria Chemicals And Industries Ltd. ... vs State Of U.P. And Ors. And Vice Versa on 16 January, 1992

Equivalent citations: 1992 SCR (1) 151, 1992 SCC (2) 124, AIRONLINE 1992 SC 77, 1992 (2) SCC 124, (1992) 1 JT 199, (1992) 1 RRR 281, (1992) 1 JT 199 (SC), (1992) 1 SCR 151 (SC)

Bench: M. Fathima Beevi, S.C. Agrawal, R.M. Sahai

PETITIONER:
KANORIA CHEMICALS AND INDUSTRIES LTD. AND ANR.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS. AND VICE VERSA

DATE OF JUDGMENT16/01/1992

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
FATHIMA BEEVI, M. (J)
OJHA, N.D. (J)
REDDY, K. JAYACHANDRA (J)
AGRAWAL, S.C. (J)
SAHAI, R.M. (J)
SAHAI, R.M. (J)

CITATION:
1992 SCR (1) 151 1992 SCC (2) 124
JT 1992 (1) 199 1992 SCALE (1)107

ACT:
Electricity (Supply) Act, 1948: Section 60 (As introduced by section 7 of Electricity Laws (U.P. Amendment) Act, 1983.

: Company-Electricity Board-Contract for supply of electricity at concessional rates on special considerations-Power of Electricity Board to revise rates-U.P. Gazette Notification dated 29.10.82-Schedule-Levy of HV-2 rates i.e. uniform tariff applicable to "bulk power" consumers in substitution of contracted rates-Validity of-Held fixation of rates was not vitiated-Revision of rates can be given retrospective effect-Failure to specify the precise manner in which the rates were arrived at does not vitiate the rates fixed-Power or revise tariff can be exercised more than once-Electricity Board can fix rates

higher than HV-2 rates-But levy of rates higher than HV-2 rates on the Company held not justified under the circumstances.

Section 49-Electricity Board-Revision of rates-Factors to be taken into account-Distinction between section 49 and 60 explained.

Electricity Laws (U.P. Amendment) Act, 1983 (Act 12 of 1982) : Section 7-Difference in English and Hindi version of Act, Absence of words "for this first time" in Hindi version of Act-Effect of.

HEADNOTE:

The appellant-company set up a caustic soda industry at Renukoot involving the use of electricity as the main raw material. On 30.9.63 it entered into a contract with the State of Uttar Pradesh for supply of electricity for the period of 25 years from 1.4.64, to the extent of 6.5 NW from the Rihand Hydel station at a fixed rate of 2.5 paise per unit and an additional supply of 1.5 NW from an inter-connection at the rate of 5 NP per unit. The terms of the contract provided that the transmission and distribution losses were to be borne by the company and that the rates could be raised after sixteen years but any enhancement in rates was not to exceed 10 per cent of the rates agreed upon.

Subsequently, the UP Government enacted the Electricity Laws (Uttar Pradesh Amendment) Act, 1983 which came into force from

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20.5.1983. Section 7 of the said Act amended section 60 of the Electricity Supply Act, 1948 by inserting sub-section (3) to (5) with retrospective effect from April 1, 1965. The Amended Act enabled the State and the Board to modify the rates of supply of Electricity to appellant under the contract of 30.9.63. Simultaneously the Parliament also amended Section 59 of the Electricity Supply Act by the Act 18 of 1983 enabling the Electricity Board to fix the tariff in such a way so as to build up a statutory surplus fixed by the State Government.

On the passing of the Amendment Act, the Electricity Board informed the appellant-company that the rates were proposed to be revised and later it informed the appellant-company that on 28.9.83 the State Government, by its Gazette Notification dated 29th October, 1982, had approved the levy of HV-2 rates (i.e. uniform tariff applicable to `Bulk power' consumers) in substitution of the rates mentioned in the agreement of 30th September, 1963. The effect of the revision was to oblige the appellant-company to pay 57.71 paise per unit for 1983-84 and 61.60 paise per unit for 1984-85. Accordingly, supplementary bills were raised demanding Rs. 3.07 crores from the appellant-company. The

appellant filed a writ petition in the High Court of Allahabad assailing the Validity of section 7 of the amending Act and the right of the Board to enhance the rates.

By its order dated 2.4.87 the High Court allowed the writ petition and quashed the approval dated 28.9.83 given by the State Government to the new rates and the consequential demands of the Electricity Board but left it to the Board and State to fix revised rates afresh by directing the respondents (1) not to charge the uniform tariff rate for the period beginning from 20th May, 1983 till the rates were fixed in accordance with section 60(5) (a); and (ii) that the rates applicable to the appellants should be determined having regard to the individual circumstances of the appellant.

The Electricity Board and the State Government preferred an appeal to this Court. Aggrieved by the fact that in applying the HV-2 rates the Board and the State had not taken into account the special factors relevant to the supplies made to it, the appellant also filed an appeal in this Court.

In the meantime, pursuant to the directions of the High Court the Board fixed the revised rates on 28.3.88 for the supply from 20th May, 1983 which were much higher than the HV-2 rates fixed earlier and

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quashed by the High Court.

The appeals came to be heard by this Court on April 10, 1991 when this Court directed that the appellant should make a representation to the State Electricity Board setting out the individual factors which should be taken into account in fixing the rates applicable to them within the meaning of section 60(5) (a) of the 1948 Act and that the State Government should reconsider the fixation after considering the recommendations made by the Board as well as the representations of the appellant.

Accordingly the State reconsidered the matter and by its order dated 31.8.92 approved the rates fixed by the State Government on 28.3.88.

The appellant challenged the validity of the rates fixed contending that (i) the fixation of rates as on 31.8.1992 was not valid because (a) the respondents have not complied with this court's directions dated 10.4.1991 as they have neither disclosed the factors based on which the rates were revised in March 1988 nor indicated the monetary incidence or impact of the factors taken into account; (b) in the process of refixation of the rates there was no genuine exercise to consider relevant factors in determining the rate under section 60 (5) (a); (c) that the Board had not set out anywhere the precise manner in which the rates recommended by them were arrived at; (ii) Section 60 cannot be interpreted so as to give power to the Board to fix rates retrospectively because (a) such an interpretation precludes

the Board and the State from revising the rates prospectively; (b) if the power is held exercisable more than once, it will permit successive revisions each superseding the earlier one, a position that could lead to harassment; (c) that the Hindi version of the Amendment Act is differently worded and does not contain the words "for the first time" found in the English version and in case of a conflicting version between Hindi and English version the Hindi text should be the key to find out the true intention of the Legislature; and (iii) in view of a facts (a) that the company established its industry in a backward area at the request of the State and in public interest; (b) the transmission and distribution losses are borne by the appellant and (c) electricity is one of the raw materials needed for its industry the appellant should be charged less than the HV-2 rates.

On behalf of the Electricity Board it was contended that the

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demand of rates higher than HV-2 rates was justified because (a) the Company has been getting substantial supplies of electricity at nominal rates from 1963 to 1983; (b) The Board has incurred heavy losses over the years by supplying electricity at concessional rates; and (c) there was a necessity to build up a statutory surplus prescribed by section 59.

Allowing the Company's appeal in part and dismissing the Electricity Board's appeal, this Court,

HELD: 1.The fixation of revised rates is not vitiated. [173-E]

2. Section 60 does not require the Board or the State Government to explain each and every step in its calculation. All that the Electricity Board has to do is to take into consideration the factors relevant under section 60(5) and propose rates for fixation to the State Government. It is in order to ensure that these recommendations take into account all relevant factors that an opportunity has been provided to the consumer to satisfy the Board as well as the State Government that the fixation has taken into account certain relevant factors. Therefore, the rate revision proceedings were not vitiated for the reason that the Board has not set out the precise manner in which the rates recommended by them were arrived at. [172 D-E, 172-C]

2.1 Apart from the general factors which have been taken into account in fixing the general tariff rates, the Board has, in making its recommendations, taken into account the purpose for which supply was required by the appellant along with the factor of recurring losses incurred by the Board year after year and its statutory requirements to maintain a minimum surplus of 3 per cent as required under section 59 of the Supply Act, 1948. [173-D]

2.2 The rates recommended by the State Electricity

Board and approved by the State Government were within the knowledge of the appellant-company. The appellant-company filed its representation. After considering the representation, the Board made its recommendations to the State Government and a copy of the recommendations were also available to the appellant. The appellant had full opportunity to meet the various points set out in the recommendations of the Board. The comments of both the Board and the Appellant were taken into account by the State Government before finally approving of the rates proposed by the Board. Therefore, the appellant-company had full opportunity to place all its special feature before the Board and the

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State Government. [171H, 172A,B, 173E]

2.3 If one compares the two provisions viz. sections 49 and 60 one will find that most of the elements are common to the two provisions. Both under section 49 and section 60 the authorities have to take into account the geographical position of any area, the nature of supply and purpose for which supply is required and any other relevant factor. The only difference between the two provisions is that since section 49 deals with a general fixation while section 60(5) deals with a fixation for a particular individual case, there may be some special factors to be taken into account which may or may not be germane while fixing the general tariff under section 49. [172H, 173-A]

Indian Aluminium Company Ltd. v. Kerala State Electricity Board, [1976] 1 S.C.R. 70; cited.

3. A retrospective effect to the revision of rates is clearly envisaged by section 60. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Therefore, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective. [174E-G]

3.1 The mandate of section 60 is only that the rates to be charged on supplies for which payment becomes due after 20.8.83 shall be as fixed by the Board. The powers of the Board in fixing the rates-including the dates from which they will be operative are not restricted in any manner. The Board is at complete liberty to fix different rates from different dates and that scheme of fixation will be read with the contract. Only the Board cannot revise the rates in respect of supplies for which payment under the contract fell due before the Amendment Act came into force. [175-B-C]

3.2 The power under section 60 is exercisable more than

once. However, while making a subsequent revision, the authorities will not normally tamper with an earlier revision or alter the dates of effectiveness fixed for the earlier revision without a valid reason to do so. If this is done, it will be open to a court to examine the basis thereof and

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sustain it only where the earlier fixation was based on an error or misconception or the like and called for modification. [175D-E]

3.3 Although the Hindi version of the Amendment Act is differently worded and does not contain the words "for the first time" found in the English version, the Hindi version does not really alter the position; actually it is the presence of the words "for the first time" in the English version that create ambiguity. Without these words, the clause clearly provides that all supply of electricity, for which payment is to be made after 20.5.83, i.e. coming into force of the Amendment Act, will be charged at the rates to be fixed by the Board. Therefore, the fixation by the Board of rates from 20.5.83, and, at different rates for different period of time, is unexceptionable. [175F-H, 176-A]

Mata Badal Pandey v. Board of Revenue, (1974) U.P.T.C. 570; referred to.

4. There are no obstacles, statutory or theoretical, standing in the way of the Board fixing rates for the company which will be higher than the rates applicable to bulk consumers. The provision in s. 60(5)(a) is intended to enable the Board and State to cut off the shackles cast by an ancient contract entered into at a time when conditions were totally different. It confers an absolute and unrestricted enabling power to revise the rates in an appropriate manner. [174-A]

While revising rates, the only limitation which the statute requires the authorities to keep in mind are the factors mentioned in the section. Whether the revised rates for the consumer governed earlier by the contract should be higher or lower than, or equal to, the tariff rates would depend on a large number of considerations, in particular, the basis on which, and the point of time at which, those general rates were fixed. In principle, it is quite conceivable that, in an appropriate case, a consideration of the relevant factors may justify even a rate higher than the general tariff rates intended for the particular category of consumers. [174B-D]

4.1 However, there is no material to justify any departure from the HV-2 rates in the case of the appellant. The special circumstances pleaded by the appellant-company have lost their importance with the passage of time. The conditions that prevailed in 1963 are not valid and the appellant has had the benefit of concessional rates for twenty years. The consideration that electricity is a "raw material" in the assesee's

business is, again irrelevant for it can mean nothing more than that the appellant needs substantial quantities of the energy and there is no reason why it should not pay for it at the normal market rates. Therefore, the appellant has no valid justification for staking a claim to less than the HV-2 rates. [177B-D]

4.2 Equally, the authorities have no case to raise the rates beyond the HV-2 rates. The huge losses that the Board has been incurring and the statutory justification for escalation in the rates keeping in view the necessity to build up a surplus is an aspect of working which should affect all the consumers equally. May be the Board can, in appropriate circumstances, seek to make up for a part of the losses by hiking up the rates to one particular category of consumers but that would not be justified here as the transmission and distribution losses in respect of the supply to the appellant are borne by it and, in the absence of some special vital reason, it would not be equitable to fix the rates of supply to the appellant above the rates applicable to other HV-2 consumers. Therefore, there is no justification to charge more than HV-2 rates from the appellant. [177EG, 178-B]

4.3 The determination of 1988 and 1991 are quashed. The State Electricity Board is directed to charge the appellant-Company from 20.5.83 to 31.3.89 at the HV-2 rates applicable to other consumers. [178-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1306 of 1988.

From the Judgment and Order dated 2.4.1987 of the Allahabad High Court in Writ Petition No. 1818 of 1984.

H.N. Salve, P.P.Tripathi, Manoj Swarup and K.J. Johan for the Appellants.

B.Sen, Gopal Subramaniam, Prashant Kumar and Mrs. S. Dikshit for the Respondents.

The Judgment of the Court was delivered by RANGANATHAN, J. There was a time when, in almost every State in India, people were invited to avail of the supply of the electric energy produced in the State and offered special concessions when they agreed to do so in bulk under long-term contracts. A situation, however, has since developed when the demand for the energy increased so rapidly that, despite the quantity of available electric energy also having gone up tremendously the rates of supply agreed upon became uneconomical. The State and its instrumentalities, who were supplying the energy, found themselves without power to revise the rates to meet the altered situation until the legislature came to the rescue. It is this situation in the case of Kanoria Chemicals and Industries

Ltd. (hereinafter referred to a `the appellant') which has given rise to these appeals.

The Electricity (Supply) Act, 1948, (hereinafter referred to as `the 1948 Act') entrusted the control over the generation and distribution of electric energy to Electricity Boards constituted under the Act. In the State of Uttar Pradesh, the U.P. State Electricity Board (hereinafter referred to as `the Board,) was constituted on 1.4.1959. At that time, the State Government (hereinafter referred to as `the State') was in the process of establishing the Rihand Hydro-Electric Generating Plant, which become operational w.e.f. 1.2.62, and attained an ultimate installed capacity of 300 M.W. The control of this remained with the State till 31.3.1965. Since the supply of electrical energy was then available in abundance and only the eastern area of the State was served by the plant, the State considered it expedient to enter into contracts with bulk purchasers both with a view to ensure maximum utilisation of the electricity available and with a view to the industrialisation of the eastern areas of the State. In particular the State was keen on the industrial development of the district of Mirzapur, which was considered to be an extremely backward area. The State was keen that power intensive units be set up in close proximity of Rihand so that electricity could be supplied to these units from the Rihand power plant. One feature of the supply of electricity from Rihand was that the metering was done at the point of generation so that transmission and distribution losses and costs could be borne by the consumers of electricity.

The appellant set up an industry for manufacture of caustic soda at Renukoot sometime in 1964. According to the appellant, this industry involved the use of electricity as the main raw material, the other raw material needed being salt. It is said that there were considerable disadvantages in setting up the proposed caustic soda unit in the district of Mirzapur, principally due to its distant location from areas from which salt had to be transported. The appellant, it is said, could easily have set up its factory in some other State with greater facilities and advantages but it was induced to set up the caustic soda plant at Pipri in the district of Mirzapur on account of the assurance given by the State that it will supply hydro electric power to the assessee from the Rihand power plant on a long term basis at a cheap rate. It is claimed that, but for this promise, the appellant would never have chosen Pipri or the district of Mirzapur for the location of this plant.

After elaborate discussions between the State Government and the promoters of the appellant company, the plant was set up at Pipri and a contract was entered into between the State Government and the appellant on 30.9.1963 ensuring the supply of electricity from the point of generation to the appellant for a period of 25 years from 1.4.64. The supply, to the extent of 6.5 MW. was to be from Rihand hydel station at a fixed rates of 2.5 paise per unit. An additional supply of 1.5 MW was also promised from an inter-connection at the rate of 5 N.P. per unit. The rates could be revised after the first sixteen years but any enhancement in rates was not to exceed 10 per cent of the rates agreed upon.

The State agreed further to supply 4.5 MW to the appellant from the Obra Hydro-Electric Project on such rates as would be fixed subsequently. It may be mentioned that this clause gave rise to disputes which were referred to arbitration. An award was made by justice D.P. Madan, a retired judge of this Court, which was made a decree of this Court by an order dated 1.4.1987. Under the award, the rate of supply was fixed at 8.69 paise per unit. The State's grievance is that it incurred a loss of Rs. 10.55

crores by supplying electricity from Rihand between 1.4.64 and 19.5.83 at concessional rates instead of applying the uniform tariff applicable to other "bulk power" consumers, briefly referred to as "HV-2 rates." It says also that it likewise suffered a loss of 12.4 crores due to the supply at 8.69 paise instead of normal rates, from Obra between 1.4.71 and 31.3.89, when the agreement, came to an end by efflux of time.

Obviously, it was not economical to continue supplying energy at the preposterously low rates to which the State had committed itself in 1963 on account of the conditions that prevailed at the time of the agreement. The powers of the State or the Boards to revise contractual rates unilaterally were examined by this Court in Indian Aluminium Company Ltd. v. Kerala State Electricity Board [1976] 1 SCR

70. It is sufficient to say that, after considering the provisions of section 49 and 59 of the Supply Act, the Court held that the Electricity Board were not entitled to enhance charges in derogation of stipulations contained in agreement entered into between parties. This decision led to the provisions of the Supply Act being amended by various States. The State of Karnataka, Orissa and Rajasthan brought in amendments enabling the Electricity Board to supersede contracts and revise the rates contained in earlier agreements. The U.P. Government, also enacted the Electricity Laws (Uttar Pradesh Amendment), Act, 1983, to vest the State's agreement with the Board and to enable the Board to revise the contractual rates. The Act came into force from 20.5.1983. Section 7 of the said Act amended Section 60 of the Supply Act, 1948 by inserting the following sub-sections (3) to (5) with retrospective effect from April 1, 1965 :

> (3) All expenditure which the State Government may, not later than two months from the commencement of the Electricity Laws (Uttar Pradesh Amendment) Act, 1983, declare to have been incurred by it on capital account in connection with the purposes of this Act in respect of the Rihand Hydro Power System shall also be deemed to be a loan advanced to the Board under section 64 on the date of commencement of this sub-section and all assets acquired by such expenditure shall vest in the Board with effect from such commencement. (4) The provisions of the sub-sections (1) and (1- A) shall, subject to the provisions of sub-section (5) apply in relation to the debts and obligations incurred, contracts entered into and matters and things obliged to be done by, with or for the State Government in respect of the Rihand Hydro Power system after the first constitution of the Board and before the commencement of this sub-section as they apply in relation to debts and obligations incurred, contracts entered into, matters and things engaged to be done by, with or for the State Government for any of the purposes of this Act before the first constitution of the Board. (5) All such contracts entered into by the State Government for supply of electrical energy based on or connected with the generation of electricity from the Rihand Hydro Electric Generating Station to any consumer and any contract entered into by the Board on or after April 1, 1965 for the supply of electrical energy to such consumer shall operate subject to the modifications specified in the following clauses, which shall have effect from the date of the commencement of the Electricity Laws (Uttar Pradesh Amendment) Act, 1983 (hereinafter referred to as the

said date):-

(a) the rates to be charged by the Board for the energy supplied by it to any consumer under any contract for which the payment will be due for the first time on or after the said date shall be such as may with the previous approval of the State Government be fixed by the Board, having due regard to the geographical position of the area of supply, the nature of the supply and purpose for which supply is required and any other relevant factor.

(b) If the State Government directs the Board under Section 22-B of Indian Electricity Act, 1910 or under any other law for the time being in force to reduce the supply of energy to a consumer and thereupon the Board reduces the supply of energy to such consumer accordingly, the consumer concerned shall not be entitled to any compensation for such reduction, and if the consumer consumes energy in excess of the reduced limit fixed under the said section 22-B or any other law for the time being in force as the case may be, then the Board shall have the right to discountinue the supply to the consumers without notice ,and without prejudice to the said right of the Board, the consumer shall be liable to pay for such excess consumption at double the normal rate fixed under clause (a);

(c) Any arbitration agreement contained in such contract shall be subjects to the provisions of this sub-section.

Parliament also, at about the same time, amended s. 59 of the Act by Act 18 of 1983. The amended s. 59(1), which is sufficient for our purpose reads thus :

59. General principles for Board's finance - (1) The Board shall, after taking credit for any subvention from the State Government under Section 63, carry on its operation under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall, after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any) on income and profits depreciation and interest payable on all debentures, bonds and loan, leave such surplus as is not less than three per cent, or such higher percentage, as the State Government may, by notification in the official Gazette, specify in this behalf, of the value of the fixed assets of the Board in service at the beginning of such year.

Explanation - For the purposes of this sub-section.

"value of the fixed assets of the Board in service at the beginning of the year" means the original cost of such fixed assets as reduced by the aggregate of the cumulative depreciation in respect of such assets calculated in accordance with the provisions of this Act and consumer's contributions for service lines.

It has been pointed out to us that the U.P. State amendment is somewhat different from those of the other States. The Karnataka legislature amended s. 49 of the 1948 Act and the Orissa and Rajasthan legislatures inserted s. 49A in the said Act. These provisions enabled the Boards' to prescribe tariffs and these rates were to prevail over those specified in the agreement. The latter two amendments actually declare the relevant clauses in the agreement void from inception. The U.P. amendment. however, retains the effectiveness of the earlier contracts and only reads into them the rates that may be prescribed by the Board. This is the first difference. The second is that while the other legislations affect all agreements entered into before a specified date, the U.P. amendment is restricted to contracts for supply of electricity from the Rihand Hydro- Electric Generating Station. We are informed that, when the above amendment was sought to be effected, the only outstanding contract of the State for the supply of electricity from the Rihand Hydro-Electric Generating Station was the contract with the appellant on the 30th of September, 1963. There had been two agreements entered into for supply of electricity from this power station but the other one with Hindustan Aluminium Company had become ineffective since that company gave up its claim to supply from the above power plant in 1975-76 having been successful in putting up a power plant for its captive use. Thus, though the Act purports to be one of general application, it was really intended to enable the State and the Board to modify the rates of supply of electricity to appellant under the contract of 30.9.1963.

At this stage it may be useful to refer also to the terms of s. 49 of the Act. It reads thus :

(1) Subject to the provisions of this Act and or 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 of 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. (4) In fixing the tariff and conditions for the supply of electricity, the Board shall not show undue preference to any person.

After the statute was thus amended, the Additional Chief Engineer of the Board wrote to the appellant on 6.2.1984 stating that, though the bills were being drawn on the basis of the agreement, the rates were subject to revision with effect from May 20, 1983 with the approval of the State Government and that a supplementary bill would be sent for the arrears as and when the rates were revised in pursuance of section 60(5) (a). On 5th April, 1984, the appellant filed Writ Petition No. 1818 of 1984 in the High Court of Allahabad assailing the validity of section 7 of the amending Act and the right of the Board to enhance the rates. While admitting the writ petition, the High Court passed an interim order to the effect that the State Government should provide an opportunity of hearing to the appellant before bringing about any change in the terms and conditions of the Agreement or tariff rates and that no revised rates shall be charged from the appellant till it is heard, and the matter decided, by the State Government. On June 11, 1984, the Law Officer of the Board wrote to the appellant requesting it to give in writing the points which they wanted to urge before the rates were approved by the State Government. According to the appellant, this was not sufficient compliance with the court's order and it moved the High Court for amending its petition and made further applications to the Court. It may be mentioned that the stand taken up by the Board in the writ petition was that the writ petition was premature as the State's approval had not been obtained and no injury had been caused to the appellant. But, suddenly, on 31.1.85, the Board wrote to the appellant informing it that the State Government had approved the levy of rates as per Schedule HV-2 (as defined in the U.P. Gazette Notification dated 29th October, 1982) applicable to heavy power consumers in substitution of the rates mentioned in the agreement of 20th September, 1963. It was stated-curiously enough-that the approval of the State Government had been given on 28.9.1983. The effect of the revision was to oblige the petitioner to pay 57.71 paise per unit for 1983-84 and 61.60 paise per unit for 1984-85. An idea of the magnitude of the revision can be had by pointing out that supplementary bills raised on the basis of the revision for the period 20.5.83 to 31.12.1984 were to the tune of Rs. 3.07 crores. The appellant's allegation is that no such approval had been given and it is asserted that the internal correspondence between Board and State would show that the legal Department of the Board had raised certain objections to the levy of HV-2 rates on the appellant, and that consequently Board had sent a fresh proposal in December 1983 seeking approval of the State Government for imposing a flat rate in respect of supplies to the appellant in place of earlier proposal. It is also stated no proposal was made, or approval sought, for imposing the revised rates w.e.f. 20.5.1983.

The Board, however, proceeded to make demands against the appellant on the basis of the revised rates. According to the Board, reference was made to a resolution dated 30.1.85 to the withdrawal on that date of the proposal for a flat rate in place of HV-2 rates. Thus, demands on the basis of

HV-2 rates were sought to be sustained. The demands amounted to several crores of rupees and disconnection was threatened in case of nonpayment. The appellant obtained certain interim orders from High Court (which have been subsequently considered and modified from time to time by this court during the pendency of these appeals). It is, however, not necessary to refer to these interim orders as the final liability of the appellant will have to be decided on the basis of the orders of this Court on the appeals.

The writ petition was heard by a Bench of two judges. Both judges repelled the challenge to the validity of the Amendment Act but differed on some of the points which came up for their consideration. Srivastava, J. was of the opinion that the intention and purpose of the Amendment Act was to revise the existing contractual rate of energy charges and charge higher rates upto the extent of uniform tariff rates for the supply of electricity to the consumers whose contract stood modified by the said statute. The rates so fixed had to be dependent upon the factors enumerated in section 60(5). According to him, the material on record showed that the factors enumerated in section 60(5) had not been taken into account by the Board before fixing the rates or by the State Government in according its approval to the same. The Board and the Government appeared to have acted upon a consideration of the factors mentioned in section 49(2) of the Act of 1948 while framing a uniform tariff but this was not sufficient compliance with the provisions of section 60(5). On the other hand, Mathur. J. was of the opinion that the move for amendment of the Act and enforcement of HV-2 tariff was initiated by the Board and that the notings contained a detailed justification for enforcing the said tariff. It also appeared from the statement of objects and reasons of the amending bill that the supply of electricity at concessional rates despite losses and the desirability of replacing the said rate by uniform tariff came up for discussion in the State Legislature and that the Board did not act wrongly or illegally if it felt that it had no option but to apply uniform rates in view of the statement contained in the objects and reasons of the bill and the discussion in the State Legislature. He was also of the opinion that the factors contemplated by section 60(5) (a) were similar to those envisaged by section 49(2), and since consideration had been given to the latter factors while farming the uniform tariff, no consideration of factors relevant to individual consumers was called for. The two learned judges thus differed on the following two points :

> (a) Whether the language of section 60 (5) (a) of U.P. Act No. 12 of 1983 required consideration of factors prescribed in section 60 (5) (a) viz., geographical position of the area of supply, the nature of supply and purpose for which supply is required and other relevant factors with reference to petitioner company for revising the existing contractual rate of H.C. tariff?
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> (b) Whether the factors mentioned in section 49(2) of Electricity (Supply) Act, 1948, having already been considered at the time of farming uniform tariff no fresh consideration of any factors mentioned in section 60(5)(a) of U.P. Act No. 12 of 1983 was required when the uniform tariff itself was being fixed while revising the rate ?

The difference of opinion was, therefore, referred to a third Judge, Mehrotra, J. This learned Judge answered that question referred to him as follows :

(a) The language of section 60(5)(a) of U.P. Act 12 of 1983 requires consideration of factors prescribed in it with reference to the petitioner company for revising the existing contractual rate;

and

(b) Fresh consideration of the factors mentioned in section 60(5)(a) was required irrespective of the fact that factors mentioned in section 49(2) of the Electricity (Supply) Act, 1948 had already been considered at the time of framing of the uniform tariff which was being fixed for the petitioner company while revising the rates.

Consequent on the opinion of this learned Judge the writ petition was allowed and a writ of certiorari was issued quashing the approval dated 28.9.1983 given by the State Government to the new rates and the consequent resolutions, sanctions, bills and demands of the Board and the State Government. A writ of mandamus was also issued commanding the respondents not to charge the uniform tariff rate for the period beginning from 20th May, 1983 till the rates were fixed in accordance with section 60(5) (a) of U.P. Act no. 12 of 1983. The Order disposing of the Writ petition finally is dated 2.4.1987.

Immediately the judgement was pronounced the State Electricity Board and the State Government sought a certificate of fitness for preferring an appeal to this Court and the High Court granted the certificate, as prayed for. This appeal has not been numbered on account of delay. Though the High Court had quashed the revision of the rates, it had left it to the board and State to fix revised rates afresh. That apart, the appellant had also a grievance that, in applying the HV-2 rates which were applicable to other consumers, the Board and the State had not taken into account the special factors relevant to the supplies made to it. The appellant also, therefore, filed S.L.P. No. 13967 of 1987 for leave to appeal from the judgement dated 2.4.1987. Leave has been granted by this Court on 8.4.1988 and the appeal of the company had been registered as C.A. 1306 of 1988.

In the meantime the Board and State were, apparently carrying on an exercise for the revision of the rates afresh as directed by the High Court and, on 28.3.1988, the Board purported to fix the following revised rates for the supply from 20th May, 1983.

Period	Rate (Paise per unit)
20.5.1983 to 31.3.1984	70.21
1.4.1984 to 31.3.1985	74.93
1.4.1985 to 31.3.1986	85.14
1.4.1986 to 31.3.1987	88.60

It will be observed that rates thus fixed, and said to have been approved by the State Government, were much higher than the HV-2 rates fixed earlier, objected to by the appellant and quashed by the High Court. Having done this, this Board sought leave to withdraw the appeal preferred by it. So far the appellant's appeal was concerned, it was contended that the appellant's remedy was to challenge the revision of 28.3.1988, if so advised, in fresh proceedings. This was the position when these appeals came to be heard by us on April 10, 1991.

We heard the appeals at length and reserved orders. In doing so we passed the following order :

"The appeals pertain to the fixation of tariff rates for supply of electricity to the appellants caustic soda plant at Renukoot. The appellants originally came to court challenging the levy of the electricity charges on the basis of HV-II rates applicable generally to consumers drawing supply from the U.P. State Electricity Board. However, the High Court held that the rates applicable to the appellants should be determined having regard to the individual circumstances of the appellants. This was by a majority judgement in the High Court. Subsequently, the Electricity Board had proposed, and the State Government has approved, certain rates for the period from 20.5.1983 to 31.3.1987 which are somewhat higher than the HV-II rates originally approved. This is the bone of controversy between the parties. We find that the State Government and Board have filed no counter affidavits in regard to the challenge by the appellants to the revision of rates effected subsequent to the High Court judgment. In the circumstances, before we pronounce our judgment we think that, in the interests of justice, it would be proper to direct the State Board and the State Government to reconsider the fixation effected by them on the basis of the following directions :

1. Within a period of three weeks from today, the appellants will file before the State Electricity Board (with a copy to the State Government) a representation setting out what, according to them, are the individual factors which should be taken into account in fixing the rates applicable to them within the meaning of section 60(5)(a), 1948 as amended in 1983.

2. The State Electricity Board will consider this representation and make appropriate recommendations to the State Government. However, before doing so, and particularly if the Board intends to take into account any factors other than those mentioned in the appellants' representation, they should indicate the factors which they so wish to take into account, in their recommendations to the State Government. A copy of the recommendations should be forwarded to the appellants within seven weeks from today.

3. On receipt of the recommendations made by the Board, the appellants may submit to the State Government, if they so desire, any representation which they wish to make regarding the recommendations within a period of three weeks thereafter.

4. The State Government will consider the recommendations of the State Board as well as the representations made by the appellants to the Board as well as to themselves and approve of the rates which they consider proper in the circumstances of the case by a reasoned order, giving a board indication of the factors which they have taken into account in fixing the rates. This decision should be arrived at within a period of four weeks from the date of the receipt of the representation of the appellants.

5. As indicated above, since the High Court has decided that in fixing the rates the individual circumstances of the appellants should be taken into account, the State Board as well as the State Government should take into consideration the special circumstances of the appellants in fixing the rates.

6. The Government's order may also, in case different rates for different periods are fixed, indicate the respective dates from which the several rates will come into operation. The rates and dates so fixed by the Government, will naturally be subject to the decision on these appeals."

Subsequent to our order, the appellant made a representation to the Board on 29.4.91. The Board made its recommendations thereon to the State Government on 26.6.91. Thereafter the appellant made its representation to the State Government on 22.7.91. The State Government has subsequently passed an order on 31.8.91 and submitted the same to us. It is perhaps sufficient to extract the concluding paragraphs of the order.

"After analysing the contentions of Kanoria Chemicals and the State Electricity Board, the State Govt. comes to the conclusion that M/s. Kanoria Chemicals and Industries Ltd. has taken benefit of establishing this unit in a backward area for the last 19 years and there is no justification in giving this benefit in continuously future also because this area has been developed in comparison to earlier years. The request of M/s. Kanoria Chemicals and Industries Ltd. that the factors shown by State Electricity Board should be limited to Rihand Hydel Power Station, is without justification since at present, they are getting supply from U.P. Grid and not from Rihand Power Station. Hence, the point of view of the State Electricity Board is justifiable.

8. After due consideration of representation dated 24.2.91 and 22.7.91 of M/s. Kanoria Chemicals and Industries Ltd. and the recommendations of the State Electricity Board dated 26.6.91, the State Govt. comes to the conclusion that M/s. Kanoria Chemicals and Industries Ltd. has failed to indicate any fact which comes under the provisions of Sec. 60(5)(a) of the Electricity (Supply) Act, 1948 and which has not been considered by the State Electricity Board while fixing the rates in March 88 has kept in mind the decision of Hon. High Court of Allahabad and complied with the provisions of sec. 60(5)(a) of the Electricity (Supply) Act, 1948. Since keeping in view the factors enumerated in sec. 60(5)(a) of the Electricity (Supply) Act, 1948, the Rules were revised in March, 1988 in the following manner, hence there appears no necessity to change these rates :-

S.No.	Period	Rate
1.	20.5.83 to 31.3.84	70.21 paise/unit
2.	1.4.84 to 31.3.85	74.93 paise/unit
3.	1.4.85 to 31.3.86	85.14 paise/unit
4.	1.4.86 to 31.3.87	88.60 paise/unit

In other words, the State and Board adhere to the rates fixed on 28.3.88.

It may be interesting to set out a comparative table of the revisions effected by the Board originally (which was quashed by the High Court) and the rates now approved :

Period	HV-2 rate Paise/unit	Revised rate paise/unit
20.5.83 to 31.3.84	55.71	70.21
1984-85	59.86	74.93
1985-86	63.89	85.14
1986-87	80.88	88.60
*1987-88	84.64	88.60
*1988-89	93.39	88.60

* The revised rates for 1987-88 and 1988-89 are stated to be provisional but so far till today no fresh rates have been fixed in respect of these periods.

The resultant position is that the appellant is now facing huge demands in respect of the period since 20.5.1983 and till 31.3.1989 when the agreement expires, at rates which will be higher than the HV-2 rates which had been sought to be applied in the first instance. The appellant vehemently challenges the fixation of rates on 28.3.88 and 31.8.91.

A good part of the argument before us in these appeals, in the first instance, was addressed on the question whether the State Government was obliged to give a hearing to the consumer before revising the rates under section 60(5) and whether the factors relevant under s.60(5) can be said to have been taken into account on the ground that they had already been taken into account while fixing uniform rates under s.49. In this context, reference was made to several decisions and contentions where canvassed in regard to the nature of the process of fixation of rates of charges for supply of electricity. It is, however, unnecessary to go into all these aspects because, in pursuance of the directions of this Court dated 10.4.1991, the matter has been re-considered by the Board and the State Government and fresh rates have been fixed along with the respective dates of operation after hearing the appellant's representatives.

Broadly two principal submissions have been addressed before us at this stage on behalf of the appellants. The first is that the fixation of rates as on 31.8.1991 is not valid as the respondents have not complied with the directions given by this Court in the order dated 10.4.1991. It is argued that the respondents have neither disclosed the factors based on which the rates were revised in March 1988 nor have they indicated the monetary incidence or impact of the factors taken into account, though a specific request was made in this regard by the appellant to the Board and to the State Government. The appellant, it is said, has been gravely prejudiced and handicapped, in the absence of any such disclosure, in making any effective

representation. Further in the final order dated 31.8.91, the State Government has stated that the fixation of rate by the State Government was based upon the consideration of facts and data communicated by the Board to the State Government in March 1988 but, admittedly, no facts, data or basis had been placed before this court at the time of the original writ petition on the basis of which the State Government had fixed the rates in March, 1988 compelling this Court to remand the matter for fresh consideration. Suddenly the Board, while concluding its recommendation to the State Government on 26.9.91 reminded the State Government that prior approval of the State Government for the rates had already been obtained in March 88 and persuaded the State Government to mechanically uphold the pre-determined rates. Finally, it is contended that even in this process of re- fixation of the rates there was no genuine exercise to consider relevant factors in determining the rate under section 60(5)(a).

We do not think that there is any force in these contentions. By the time the matter came up before us for hearing in the first instance the State Government had already passed its order of revision dated March 28, 1988. The rates which had been recommended by the State Electricity Board and approved by the State Government were within the knowledge of the appellant. It was of course necessary and equitable that, before giving effect to these rates (if not even before they were recommended), the consumer should have had no opportunity of placing before the Electricity Board and the State Government its side of the picture. This opportunity has, however, been provided by to the appellant. The appellant has also filed its representation. After considering the representation, the Board made its recommendations to the State Government and a copy of these recommendations were also available to the appellant. The appellant also had full opportunity to meet the various points set out in the recommendations of the Board. The comments of both the Board and the appellant have been taken into account by the State Government before finally approving of the rates proposed by the Board. The grievance of the appellant seems to be that the Board has not set out anywhere the precise manner in which the rates recommended by them were arrived at and that this has considerably handicapped any effective representation being made by it to the Board and to the State Government. We do not think the proceedings are vitiated for this reason. It is true that the actual computations of the rates were not set out by the Board in its recommendations made in 1983 or 1985 or 1988 but the proper approach to the issue is not the one adopted by the petitioner. The section does not require the Board or the State Government to explain each and every step in its calculation. All that the State Government has to do is to take into consideration the factors relevant under section 60(5) and propose rates for fixation to the State Government. It is in order to ensure that these recommendations take into account all relevant factors that an opportunity has been provided to the consumer to satisfy the Board as well as the State Government that the fixation has not taken into account certain relevant factors. We, therefore, think the appellant must be held to have been given a fair opportunity under s. 60(5)(a) so long as it had an opportunity to explain to the Board

and the State Government the factors individual to its case and also as to how and why the rates recommended by the Board need modification. Moreover, the issue here was in a narrow compass for the following reason. On the passing of the Amendment Act, the Board decided to substitute the contract rates by the HV-2 rates. But this was rendered infructuous because of the terms of section 60(5)(a) which, it was said, were different from those of s. 49. If the factors under section 49 were alone to be taken into account then the consumers, one and all, would have been liable to pay for the electricity at the tariff rates. The claim of the appellant was that in applying these rates certain factors individual to it had not been taken into account. If one compares the two provisions, one will find that most of the elements are common to the two provisions. Both under section 49 and section 60 the authorities have to take into account the geographical position of any area, the nature of supply and purpose for which supply is required and any other relevant factor. The only difference between the two provisions is that since section 49 deals with a general fixation while section 60(5) deals with a fixation for a particular individual case, there may be some special factors to be taken into account which may or may not be germane while fixing the general tariff under section 49. Hence the only point which needed to be considered, when the matter was reexamined pursuant to our directions, was whether, having regard to the factors prevailing in the case of the appellant the rates to be fixed should be higher or lower than the HV-2 rates or whether they should be the same. It was open to the petitioner to contend, as it in fact did, that there are special features in its case which make it legitimate to fix some concessional rates as compared to other consumers. On the other hand, it is equally open to the State Electricity Board to contend that having regard to the prevalence of certain circumstances, the rates to be fixed should be higher than the tariff rates applicable generally. This is a short aspect on which both parties have made their positions clear. Apart from the general factors which have been taken into account in fixing the general tariff rates, the Board has, in making its recommendations, taken into account the purpose for which supply was required by the petitioner along with the factor of recurring losses incurred by the Board year after year and its statutory requirements to maintain a minimum surplus of 3 per cent as required under section 59 of the Supply Act, 1948. We are, therefore, satisfied that the appellant had full opportunity to place all its special features before the Board and the State Government and that all aspects have been fully considered by the authorities. The fixation of rates on 31.8.1991 is not, therefore, vitiated for the reasons urged by the appellant.

The only other aspect that requires consideration is regarding the maintainability of the rates as now fixed by the Board and the State. Three questions arise in regard to this :

(i) Can the Board fix rates higher than HV-2 rates in respect of bulk consumers like the company for whom a concessional rate had been granted on special considerations ?

(ii) Can the Board determine rates in 1991 and make them retrospective w.e.f. 1983?

(iii)Was there material for the Board to fix rates which they have eventually fixed?

We find that the answer to the first two questions posed only be in the affirmative. On the first issue, there are no obstacles, statutory or theoretical, standing in the way of the Board fixing rates for the company which will be higher than the rates applicable to bulk consumers. The provision in s.60(5)(a) is intended to enable the Board and State to cut off the shackles cast by an ancient contract entered into at a time when conditions were totally different. It confers an absolute and unrestricted enabling power to revise the rates in an appropriate manner and contains no restriction of the nature suggested for the appellant. In doing this, the only limitation which the statute requires the authorities to keep in mind are the factors mentioned in the section. Whether the revised rates for the consumer governed earlier by the contract should be higher or lower than, or equal to, the tariff rates would depend on a large number of considerations, in particular, the basis on which, and the point of time at which, those general rates were fixed. In principle, it is quite conceivable that, in an appropriate case, a consideration of the relevant factors may justify even a rate higher than the general tariff rates intended for the particular category of consumers. We shall examine later whether this was justified in the present case. At the moment, all we are concerned with is the legality of fixing such higher rates and we see no difficulty in this either on the language of the Statute or on other considerations.

A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this state of affairs, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective.

The language of the section also supports this view. Slightly rearranging the syntax of the clause to facilitate easier understanding, what it provides is that the revised rates fixed by the Board shall be the rates to be charged by the Board for the energy supplied by it to any consumer for which the payment will be due for the first time on or after the 20th May, 1983. In other words, the rates eventually fixed will, by force of statute, apply to all supply of electricity for which the charges become payable in terms of the contract, after 20.5.1983. There are three objections suggested against this interpretation. The first is that it precludes the Board and State, where they choose to do so, from revising the rates prospectively or with effect from such dates, after 20.5.1983, which they may consider appropriate. We think this consequence does not flow from the language of the provision. The mandate is only that the rates to be charged on supplies for which payment becomes

due after 20.8.83 shall be as fixed by the Board. The powers of the Board in fixing the rates-including the dates from which they will be operative-are not restricted in any manner. The Board is at complete liberty to fix different rates from different dates and that scheme of fixation will be read with the contract. Only the Board cannot revise the rates in respect of supplies for which payment under the contract, fell due before 20.5.83. The second objection, which is a follow up of the first, is that if the power u/s 60 is held exercisable more than once, the interpretation will permit successive revisions, each superseding the earlier one, a position that could lead to immense harassment. We have no doubt the power u/s 60 is exercisable more than once. All the same, the answer to the appellant's objection is that, while this could be a basis of substantial harassment if repeated revisions are automatically dated back to 20.5.83 (as argued, on the first point, for the assessee), it loses all force on our interpretation leaving it open to the Board and State to fix the dates with effect from which revisions will be effective. In view of this, one can take in that, while making a subsequent revision, the authorities will not normally tamper with an earlier revision (s) or alter the dates of effectiveness fixed for the earlier revision (s) without a valid reason to do so. If this is done, it will be open to a court to examine the basis thereof and sustain it only where the earlier fixation was based on an error or misconception or the like and called for modification. The third objection is that the Hindi version of the Amendment Act is differently worded and does not contain the words "for the first time" found in the English version. Reliance is placed on the decision of a Bench of seven judges of the Allahabad High Court in Mata Badal Pandey v. Board of Revenue, (1974) U.P.T.C. 570 to the effect that, where there appears a doubt or ambiguity on a plain reading of the English words as to the true intention of the legislature and the Hindi version is conflicting or different. the Hindi text will be the key for finding the answer. We do not think the Hindi version really alters the position; actually it is the presence of the words "for the first time" in the English version that create an ambiguity. Without these words, the clause clearly provides that all supply of electricity, for which payment is to be made after 20.5.83, will be charged at the rates to be fixed by the Board. We, therefore, reject the appellant's contention and hold that the fixation by the Board of rates from 20.5.83 and, at different rates for different periods of time, is unexceptionable.

This takes us to the real and crucial question in the case as to whether rates to be fixed in the present case should, on proper consideration, be less than, equal to or higher than the general HV-2 rates. The appellant contends that it should be charged at the cost of generation plus a reasonable margin of profit or at the rate at which the supply is made to the Madhya Pradesh State Electricity Board. At any rate, it is said, the rates charged to the appellant should be less than HV-2 rates. For this it relies on: (a) the special circumstance that the appellant, at great detriment to itself, agreed to set up a caustic soda plant in a backward area at the request of the State Government and in public interest only because of a promised concession in rates of electricity supply; (b) the fact that the supply to the appellant is metered at the point of generation with the result that the transmission and distribution losses, in so far as the appellant is concerned, are borne by the appellant and not by the Board as in the case of other consumers and (c) the important fact that electricity, in the case of the appellant, is one of the only two raw materials needed for its business. On the other hand, for the Electricity Board, it is contended that the appellant should be called upon to pay higher than HV-2 rates for the following reasons :

(i) The appellant has been having substantial supplies of electricity at nominal rates of 2.5 paise and 2.75 paise per unit between 1963 and 1983.

(ii) The supply to the assessee is being made only from the State Grid and there is no reason why it should draw the supply at lower rates than others :

(iii) The Board had been incurring heavy losses over the years. This is to a considerable extent due to the spiraling demand for electricity, the Board's responsibilities under the statute to co-

ordinate development of the supply of energy throughout the State and the necessity to supply energy at concessional rates to certain sectors such as the agricultural sector.

(iv) The Board is also entitled, under s.59 of the 1948 Act, to take into account the necessity of building up a surplus, statutorily fixed, in the fixation of rates of supply to all or any of its consumers.

We have given careful thought to the considerations urged before us and we are of opinion that there is no material to justify any departure from the HV-2 rates in the case of the appellant. We find no force in the contentions put forward on behalf of the appellant to reduce the rates applicable to the appellant below HV-2 level. The special circumstances pleaded have lost their importance with the passage of time. It is obvious that the conditions that prevailed in 1963 are not valid and the appellant has had the benefit of concessional rates for twenty years. No doubt the benefits would have continued for five more years but for statutory intervention. But the statute permits a reconsideration of the situation as in May 1983 and it is unarguable, it seems to us, that the rate of 2.75 p. should continue even after 1983 or that the appellant should be entitled to any special concession. The consideration that electricity is a "raw material" in the assessee's business is, again, irrelevant for it can mean nothing more than that the appellant needs substantial quantities of the energy and there is no reason why it should not pay for it at the normal market rates. The point regarding take off of supply at the generating point will no doubt have some relevance on the question of rates and we shall refer to this aspect later in the context of the pleas put forward by the Board. We are, therefore, of the view that the appellant has no valid justification for staking a claim to less than the HV- 2 rates.

Equally, it seems to us, the authorities have no case for seeking to raise the rates beyond the HV-2 rates. They are supplying energy to the appellant from the grid since 1968 and they cannot justifiably seek to demand higher rates from the appellant than from the HV-2 consumers. This is sought to be justified on the basis of the huge losses that the Board has been incurring and the statutory justification for escalation in the rates keeping in view the necessity to build up a surplus. This, however, is an aspect of working which should affect all the consumers equally. May be the Board can, in appropriate circumstances, seek to make up for a part of the losses by hiking up the rates to one particular category of consumers but that would not be justified here as the transmission and distribution losses in respect of the supply to the appellant are borne by it and, in the absence of some special vital reason, it would not be equitable to fix the rates of supply to the

appellant above the rates applicable to other HV-2 consumers. Some reference was made to the difficulties in completely fitting the scheme of computations for determining the HV_2 rates into the scheme under the appellant's contract. It is, however, unnecessary to go into that aspect as we are only on the question of rates and holding that there is no justification for charging more than HV-2 rates from the appellant. Moreover, the appellant has been paying for the Obra supply at HV-2 rates since 1989. We have also been informed that in 1972 the appellant took a further additional supply of 8 MW and agreed to pay therefor at HV- 2B rates as applicable to other Bulk Power Consumers in the State.

In these circumstances, we have reached to the conclusion that there is no justification to charge more than HV-2 rates from the appellant. We, therefore, allow this appeal in part, quash the determinations of 1988 and 1991 and direct that the appellants should be charged from 20.5.83 to 31.3.89 at the HV-2 rates applicable to other consumers. The appeal of the appellant is partly allowed to the above extent. The Board's appeal has not yet been numbered as it is delayed by a few days. It was, however, stated that the Board wishes to withdraw its appeal because of the subsequent developments. For these reasons and also in view of our above conclusion the Board's appeal also stands dismissed. In the circumstances, we direct each party to bear its own costs.

T.N.A. C.A. 1306/88 Partly allowed.
C.A. 128/92 dismissed.