Supreme Court of India
Rohtas Industries Ltd. & Anr. Etc vs The Chairman, Bihar State ... on 2 March, 1984
Equivalent citations: 1984 AIR 657, 1984 SCR (3) 59
Author: V B Eradi
Bench: Eradi, V. Balakrishna (J)

PETITIONER:
ROHTAS INDUSTRIES LTD. & ANR. ETC.

Vs.

RESPONDENT:
THE CHAIRMAN, BIHAR STATE ELECTRICITY BOARD AND OTHERS

DATE OF JUDGMENT02/03/1984

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
DESAI, D.A.

CITATION:
1984 AIR 657 1984 SCR (3) 59
1984 SCALE (1)465
CITATOR INFO :
RF 1986 SC1999 (5,7,11)
R 1990 SC1851 (36)

ACT:
Electricity (Supply) Act, 1948-S. 49-Electricity Board divided consumers into various categories-Consumers of only those categories already enjoying concession in general tariff as incentive to establish industries in the State asked to pay fuel surcharge-Whether classification of consumers and levy of fuel surcharge on some consumers only arbitrary and violative of Art. 14 of the Constitution.

HEADNOTE:
Section 49 of the Electricity (Supply) Act, 1948 provided for the sale of electricity by the electricity Board to any person not being a licensee and to frame uniform tariffs for the purposes of such supply having regard, inter alia, to the nature of the supply, the purpose for which the supply is required and other relevant factors, In exercise of the powers conferred by s. 49 of the Act, the respondent Bihar State Electricity Board had classified the consumers into ten categories and had been, from time to time, issuing notifications fixing the tariff and the terms and conditions for the supply of electricity to those

consumers. With a view to encouraging the establishment of industries in the State, the general tariff rate applicable in respect of high tension supply to industries and factories had been fixed at rates which were much lower when compared to those applicable to other types of consumers. On 6.4.1979 the respondent Board, in supersession of its earlier notification fixing the tariff, issued a notification revising the tariff for all categories of consumers served by it. Para 16.7 of the said Tariff Notification provided that the consumers of low tension industrial service, high tension service, extra high tension service, and railway traction service shall be liable to pay fuel surcharge' at a rate to be determined every year in accordance with the formula set out in sub-para 2 of that paragraph. The appellants who had entered into agreements with the respondent Board for the supply of high tension electric current for their factories and were admittedly not licensees, filed writ petitions in the High Court challenging the levy of fuel surcharge on the ground that it was arbitrary and devoid of legal sanction. A Division Bench of the High Court dismissed the writ petitions. Hence these appeals and special leave petitions. The appellants' charge of discrimination was based on the ground that only consumers of low tension industrial service high tension service, extra high tension service, and railway traction service had been singled out for being subjected to a levy of surcharge, while consumers of electricity for domestic, commercial and irrigation purposes were left unaffected by any such burden.

Dismissing the appeals and special leave petitions,

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HELD; It is well-established that where a corporation is an instrumentality or an agency of Government it would, in the exercise of its powers and function,

60

be subject to the same Constitutional or public law limitations as apply to the Government and the principle of law inhibiting arbitrary action by Government would apply equally where such a corporation is dealing with the public, whether by way of giving jobs or entering into relationship with any person in any manner it likes according to its sweet will. The acts of such a corporation must be in conformity with some principle which meets the test of reasonableness and relevance. [71 F-H]

The contention that the imposition of fuel surcharge under paragraph 16.7 of the 1979 tariff notification is arbitrary and violative of Art. 14 of the Constitution has no force. The Board was perfectly within its rights in deciding to restrict the levy of fuel surcharge to those categories of consumers who were enjoying the benefit of a concession in the general rate and in sparing smaller type of consumers such as the agricultural irrigation and commercial consumers from being subjected to that burden, in

view of the fact that they were already being subjected to a basic levy at substantially higher rates. The true consequence of the action taken by the Board is only to effect a reduction in the quantum of concession that was being enjoyed by the consumers belonging to the industrial and railway traction categories. The appellants had no case that any illegality was involved in treating the industrial consumers, as a separate class and granting them the benefit of a preferential treatment for the purpose of fixing the basic rate of levy for supply of electricity. A classification which is legally valid and permissible for the grant of a concession in the basic rates will equally hold good for the purpose of a subsequent scheme of distribution of the burden in the form of fuel surcharge. A classification of these bulk consumers has a rational nexus with the object and purposes of the levy of surcharge. [65 G, 67 B-D, 66-G, 67 D-F]

The argument that levy of fuel surcharge can only be for the purpose of recouping the amounts actually paid by the Board by way of 'fuel surcharge' to the D.V.C. and the U.P. State Electricity Board for the quantities of energy purchased by the Board from these sources and the extra cost that the Board had actually to incur on fuel consumed in those two generating stations at Patratu and Barauni has no force. From the counter affidavit filed on behalf of the Board, it is seen that in respect of the increase in the cost of production of electricity in the two generating stations of the Board, the fuel surcharge has taken into account only that part of the increase in cost which is relatable to the increased price of the coal and oil i.e. fuel alone. In respect of the energies purchased by the Board from outside sources, namely, the Damodar Valley Corporation and the U.P. State Electricity Board, the increase in cost per unit incurred by the Board has been included in the computation of the fuel surcharge. Though the nomenclature given to the levy is "fuel surcharge" it is really a surcharge levied to meet the increased cost of generation and purchase of electricity and this is made absolutely clearly in the formula given in para 16.7.2. [67 H, 68 A-F]

There is no force in the contention that the words "increase in the average unit rate of purchase of energy" used in C1 below paragraph 16.7.2 should be interpreted as taking their colour from the contents of paragraph 16.7.3. From a reading of these provisions it is abundantly clear that the entire increase in costs incurred in the purchase of energy from the D.V.C. and the U.P. State
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Electricity Board has to go into the computation of the surcharge leviable under paragraph 16.7. There is no ambiguity whatever in the words used in Cl so as to require the court to take light from paragraph 16.7.3 for the purpose of understanding their scope and meaning. [69 B-D]

The contention that the financial capacity of individual industrial consumers had not been taken into account while fixing the revised tariff is devoid of force. It is not contemplated by section 49 or any of the other provisions of the Act. that as amongst consumers tailing within a specified category different rates are to be charged depending upon the financial capacity of the particular consumer to pay. On the other hand, the very core of the scheme of section 49 is that the tariff should be uniform in respect of each class or category. [70 H, 71 A-B]

It is found that notwithstanding the mandatory provision contained in s.59 of the Act obliging the Board to carry its operations and adjust its tariffs in such a way as to ensure that the total revenues earned in any year of amount shall, after meeting all expenses properly chargeable to revenue leave, such surplus as the State Government may, from time to time, specify, the Board has been selling energy at rates which are lower than the actual post insured by it per unit of production. Such being the factual situation, there is absolutely no basis for the contention that the tariff fixation effected by the Board suffers from the vice of arbitrariness and is liable to be interfered with by the Court on that ground. [73 B, 72 A-C, 73 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2855- 56 of 1982.

Appeals by special leave from the Judgment and Order dated the 9th April, 1982 of the Patna High Court in C.W.J.C. No. 3503/ 81 & 504 of 1982.

WITH Civil Appeals Nos. 2857-58 & 2859-60 of 1982 Appeals by Special leave from the Judgment and Order dated the 9th/10th February, 1982 of the Patna High Court in C.W.J.C. Nos. 1026/82,1855/81,1516/81(R), 1355/81(R)., AND Special Leave Petition (Civil) No. 2904 of 1982. From the Judgment and Order dated the 8th December, 1981 of the Patna High Court in Civil Writ Jurisdiction Case No. 1237 of 1981.

Dr. Shankar Ghosh, Parveen Kumar, Padam Khaitan, C.A. Vaidyanathan N.R. Khaitan for the Appellants in C.A. 2855- 56/82.

A.K. Sen, Padam Khaitan, Parveen Kumar and N.R. Khaitan for the Appellants in C.A. Nos. 2857-58/82.

C.S. Vaidyanathan, Anil Kumar Sharma, and Mr. Parveen Kumar for the Appellants in CA. Nos. 2859-60/82.

K.K. Venugopal, C.S. Vaidyanathan for the Petitioner in SLP Nos. 2904/82.

L.N. Sinha, Att. General, Ram Balak Mehto, Pramod Swaru and P.P. Singh for the Respondents in all the appeals & SLP.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. These appeals (by special leave) and the Special Leave Petition involve common questions concerning the validity of the supplementary bills issued to the appellants by the 1st respondent-Bihar State Electricity Board-for "fuel surcharge" as per the revised tariff dated 1st April, 1979, and hence they were heard together. Having regard to the fact that by reason of interlocutory orders passed by this Court, the realisation of large amounts demanded from the appellants by the respondent by way of charges for electric energy supplied by it stood stayed and the consequent urgency in passing final orders in these cases, as soon as the hearing was completed we passed the following order announcing the conclusion reached by us:

> "All these Civil Appeals and Special Leave Petition are dismissed with costs in each case. All interim orders made in each of these matters at various stages are vacated. Reasons will follow".

We now proceed to state the reasons in support of the said conclusion.

The Bihar State Electricity Board hereinafter called 'the Board') is incorporated under Section 12 of the Electricity (Supply) Act 1948 (hereinafter referred to as 'the Act'). The general powers and duties of the Board are set out in Section 18. Thereunder the Board has the duty, inter alia, to arrange for the supply of electricity that may be required within the State and for the transmission and distribution of the same in the most efficient and economic manner, with particular reference to those areas which are not, for the time being, supplied or adequately supplied with electricity. Section 49 of the Act makes provision for the sale of electricity by the Board to persons other than the licensees and to frame uniform triffs for the purposes of such supply. That section is in the following a terms:

> "49. (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 of such supply frame uniform tariffs.
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> (2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely :-
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> (a) the nature of the supply and the purposes for which it is required;
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> (b) the coordinated 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 such supply is required and any other relevant factors.

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

In exercise of the power conferred by the above section, the Board has been, from time to time, issuing notifications fixing the tariff and the terms and conditions for the supply of electricity to the various classes of consumers. In supersession of the, tariff rates till then obtaining under an earlier notification, the Board by its "tariff notification 1979" published in the Bihar Gazette Extraordinary No.355 dated 6.4.1979, issued a revised tariff for all categories of consumers served by it. The said tariff was to take effect from 1st April, 1979.

The appellants are companies having factories in different parts of the State to Bihar and they have entered into agreements with the Board for supply of high tension electric current. The agreements so executed are in a standard form containing substantially identical terms. Annexure I in the Writ Petition C.W.J.C. No. 1855/81 out of which C.A. 28 58/82 arises in a copy of the agreement entered into by M/s Usha Martin Black (Wire Rods) Ltd. with the Board on 18.8.1961. In clause 4 of the agreement, it is stipulated that the consumers shall pay to the supplier (Board for) the energy supplied and registered by the meters "at the rates from time to time in force and paid by similar consumers". It has been further provided in clause 11 that the agreement should be read and construed as subject in all respects to the provisions of the Indian Electricity Act 1910 and the rules for the time being in force there under. After the introduction of the revised tariffs, 1979, all the appellants continued to draw and consume high tension electric energy in their factories.

Para 16.7 of the Tariff Notification, 1979, provides that the consumers of low tension industrial service, high tension service, extra high tension service, and railway traction service shall be liable to pay 'fuel surcharge' at a rate to be determined every year In accordance with the formula set out in sub-para (2) of the said paragraph (16.7.2). This levy of fuel surcharge was in addition to the other charges specified in the tariff schedule. During the course of the year 1979, fuel surcharge a provisional rate of one paise per unit was initially levied and that was subsequently increased to three paise per unit, again on a provisional basis. In the final bills issued for the financial year 1979-80 the fuel surcharge was levied at 6.242 paise per unit. Along with the final bill of fuel surcharge for the year 1979-80, a provisional bill of fuel surcharge for the year 1980-81 was also issued to the appellant companies demanding payment of surcharge at the rate of eight paise per unit Thereupon the appellants filed Writ Petitions in the High Court of Patna contending that the provision contained in Paragraph 16.7 in the Tariff Notification of 1979 for the levy fuel surcharge is

devoid of legal sanction and is arbitrary and void. The charge of arbitrariness levelled against the imposition of fuel surcharge was based on the ground that only consumers of low tension industrial service, high tension service, extra high tension service, and railway traction service had been singled out for being subjected to a levy of surcharge, while consumers of electricity for domestic, commercial and irrigation purposes were left unaffected by any such burden. A further contention was also raised that the bills issued to the petitioners were not even in accordance with the provisions of the tariff notification and the demands made against the appellants were in excess of what was warranted even by the impugned notification. Eight writ petitions, of which C.W.J.C. 1237 of 1981, filed by M/s Shriram Bearings Ltd., Ranchi (Petitioner in SLP No. 2904/1982) was apparently treated by common consent as the main case, and were heard together as one single batch by a Division Bench of the High Court. By a detailed and well-considered judgment, the Division Bench rejected all the contentions raised by the petitioners and dismissed the Writ Petitions after recording an undertaking given by the Board that certain small amounts which were found to have been charged in the bills in excess of what was payable by the appellants on a correct computation of the surcharge would be adjusted in the next bills to be issued to them. Writ Petitions subsequently filed in the High Court by the appellants in the other appeals were later dismissed in limine by separate short judgments, following the decision of the Divisional Bench in C.W.J.C. 1237 of 1981. Hence these appeals and special leave petitions by the appellant companies.

At the outset, we may dispose of the contention urged on behalf of some of the appellants that the levy of fuel surcharge under the impugned tariff notification (paragraph 16.7) is discriminatory and hence violative of Article 14 of the Constitution. Sub-section 3 of Section 49 expressly authorises the Board to fix different tariffs for the supply of electricity to any person not being a licensee, having regard, inter alia, to the nature of the supply, the purpose for which the supply is required and other relevant factors. The power to classify the consumers into different into categories and to fix differen-

tial tariffs has thus been conferred on the Board by the Section itself. The Constitutional validity of this Section has been upheld by this Court in Maharashtra State Electricity Board v. Kalyan Borough Municipality & Another(').

The expression "licensee" means a person licensed under Part II of the Indian Electricity Act, 1910, to supply energy or a person who has obtained licence under Section 28 of that Act to engage in the business of supplying energy through definition in Section 2 (6). Admittedly, the appellants before us are not licensees. They are consumers receiving high tension supply to their factories. For the purpose of tariff fixation, the Board has classified the consumers into 10 categories, viz.. "domestic", "commercial

(i)", commercial (ii)", "street light", "irrigation", "light tension industrial" (small scale industrial upto 100 h.p.),"11 k.v. h.t.s.", "33 k.v.h.t.s.", "132 k.v. h.t.s." and "railway traction (25 k.v.)". It is seen from the materials on record for us that the industries between themselves consume nearly 65% of the total quantity of energy supplied by the Board. Apparently with a view to encouraging the establishment of industries in the State, the general tariff rate applicable in respect of high tension supply to industries and factories has been fixed at rates which are much lower when compared to

those applicable to other types of consumers. While the general rate applicable for supply of high tension electric energy for industries of the class to which the appellants belong was 22 paise per unit, consumers belonging to "commercial" categories were charged at rates ranging between 48 paise to 58 paise per unit, "agricultural" consumers at 29 paise per unit, "low tension" consumers at 34 to 38 paise per unit and "domestic" consumers at rates ranging between 38 to 43 paise per unit. Thus, in the fixation of the general tariff rate, a substantial concession has been shown in favour of industrial low tension and high tension consumers. The appellants have no case that any illegality was involved in treating the industrial consumers, as a separate class and granting them the benefit of a preferential treatment for the purpose of fixing the basic rate of levy for supply of electricity. The stand taken by the Board is that it was found absolutely necessary at the time of the revised tariff fixation effected in 1979 to augment its revenue by levying of the additional fuel surcharge in order to offset the heavy increase in expenditure and after taking into account all relevant facts and circumstances, it was decided to distribute that burden amongst the privileged class of consumers, namely those belonging to categories of low tension industrial service, high tension service, extra high tension service and railway traction service. Even after taking into account the fuel surcharge so levied under 1979 tariff, the rates applicable to high tension consumers like the petitioners range between 40.31 paise and 58.80 paise per unit only, while the commercial (ii) consumer has to pay 71.33 paise per unit and even the domestic consumer has to pay 48 paise per unit. The position that obtains under the 1981 tariff which also has been challenged by some of the appellants is substantially similar. In our opinion, the Board was perfectly within its rights in deciding to restrict the levy of fuel surcharge to those categories of consumers who were enjoying the benefit of a concession in the general rate and in sparing smaller type of consumers such as the agricultural, irrigation and commercial consumers from being subjected to that burden, in view of the fact that they were already being subjected to a basic levy at substantially higher rates. The true consequence of the action so taken by the Board is only to effect a reduction in the quantum of concession that was being enjoyed by the consumers belonging to the industrial and railway traction categories. A classification which is legally valid and permissible for the grant of a concession in the basic rates will equally hold good for the purpose of a subsequent scheme of distribution of the burden in the form of fuel surcharge. In this context, it is also relevant to remember that the levy of surcharge was necessitated by reason of the extra expenditure which the Board had to incur in the generation of electricity in the two power stations run by the Board and in the purchase of power from the two outside sources, namely, the D.V.C. and the U.P. State Electricity Board and 65% of the total quantity of energy supplied by the Board is consumed by the industrial and railway traction consumers. A classification of these bulk consumers has a rational nexus with the object and purposes of the levy of surcharge. Having regard to all these facts and circumstances, we find no substance in the contention advanced by some of the appellants that the imposition of fuel surcharge under paragraph 16.7 of the 1979 tariff is arbitrary and violative of Art. 14 of the Constitution.

The next argument advanced on behalf of the appellants was that even if the Board is legally entitled to levy the fuel surcharge, that can only be for the purpose of recouping the amounts actually paid by the Board by way of 'fuel surcharge' to the Damodar Valley Corporation and the U.P. State Electricity Board for the quantities of energy purchased by the Board from these sources and the extra cost that the Board had actually to incur on fuel consumed in those two generating stations at

Patratu and Barauni. From the counter affidavit filed on behalf of the Board, it is seen that in respect of the increase in the cost of production of electricity in the two generating stations of the Board, the fuel surcharge has taken into account only that part of the increase in cost which is relatable to the increased price of the coal and oil i.e. fuel alone. The increase in expenditure referable to the enhancement in cost of the energy generated on other accounts such as wages, maintenance, etc. has not been taken into account in the fuel surcharge. Such increase in cost of production on account of those other factors has been offset by a revision of the basic general tariff by 16.5 per cent payable not only by the industries but by all classes except the agriculturist class. In respect of the energies purchased by the Board from outside sources, namely, the Damodar Valley Corporation and the U.P. State Electricity Board, the increase in cost per unit incurred by the Board has been included in the computation of the fuel surcharge. We see no substance whatsoever in the contention advanced by the appellants that only such amounts, if any, as might have been paid by the Board to the D.V.C. and the U.P. State Electricity Board as and by way of fuel surcharge can go into the computation of the fuel surcharged levied by the Board under paragraph 16.7 of the 1979 tariff. Though the nomenclature given to the levy is "fuel surcharge" it is really a surcharge levied to meet the increased cost of generation and purchase of electricity and this is made absolutely clear in the formula given in para 16.7.2.

The formula for determining the fuel surcharge set out in paragraph 16.7.2 reads:

"S = [A1XA3+B1XB3+C1XC3+D1XD3+E1XE3/ [A2+B2+C2+D2+E2]".

This is followed by detailed explanation as to what the different alphabets used in the numerator and denominate or signify. The explanation given in respect of C1 is "Increase in the average unit rate of purchase of energy from D.V.C. during the year for which the surcharge is to be calculated. The said increase to be calculated with respect to the base year 1977-78." C3 stands for "units purchased from D.V.C. during the year". Likewise, E1 and E3 have been explained as "Increase in the average unit rate of purchase of energy from Uttar Pradesh State Electricity Board during the Year for which surcharge is to be calculated, the said increase to be calculated with respect to the base Year 1977-78" and "units purchased from Uttar Pradesh State Electricity Board" respectively.

We see no force in the contention put forward on behalf of some of the appellants that the words" increase in the average unit rate of purchase of energy" used in C1 below paragraph 16.7.2 should be interpreted as taking their colour from the contents of paragraph 16.7.3. From a reading of these provisions it is abundantly clear that the entire increase in cost incurred in the purchase of energy from the D.V.C. and the U.P. State Electricity Board has to go into the computation of the surcharge leviable under paragraph 16.7. The contention to the contrary advanced by the appellants is therefore, only to be rejected. There is no ambiguity whatever in the words used in C1 so as to require us to take light from paragraph 16.7.3 for the purpose of understanding their scope and meaning.

It was strongly urged on behalf of the appellants that the provision in Cl for increase in the average rate of price of energy from the D.V.C. to be calculated with respect to the base year 1977-78 is arbitrary in as much as in fixing the basic tariff as per the 'impugned notification' of 1979, the

difference in cost between Year 1977-78 and the current Year 1979-80 has already been taken into account. From the counter affidavit and the statements filed in the High Court on behalf of the respondent Board which form part of the record before us in these appeals, it is seen that only the fuel surcharge accrued during the Year 1977-78 had been merged while fixing the revised rates for energy and it was specifically mentioned in paragraph 2.5 of the resolution of the Board containing the proposals for the tariff revision, 1979, which the Board forwarded to the State Government that only the fuel surcharge that had accrued during 1977-78 was being merged in the revised tariff rates and that "the subsequent increase or decrease in the cost of fuel or the cost of imported energy will, therefore, reflect in the fuel surcharge hereafter". Similar is the position with respect to the tariff revision effected in 1981. Hence there is no factual foundation for the argument that there has been a double neutralisation of the increase in the fuel surcharge in respect of the energy purchased by the Board from outside sources.

Paragraph 16.7.4 of the tariff notification states that the fuel surcharge for a financial year shall be calculated by the Board after the expiry of the financial year and until such calculation is actually made, fuel surcharge may be levied during each financial year at a rate provisionally calculated on monthly or quarterly or half-yearly basis as decided by the Board, and in case of short or excess realisation, the same is to be adjusted in the next bill to be served on the consumer. Based on these provisions, it was faintly argued on behalf of some of the appellants that the Board was under an obligation to issue provisional bills in respect of fuel surcharge during the course of each financial Year and on account of its failure to do so, the appellants were unable to include the said element in their price structure in respect of cement, paper and vanaspati produced in the factories of some of the appellants. This contention has to be rejected for two reasons: firstly, the provision contained in the aforesaid paragraph of the notification is purely an enabling one and it dose not cast any mandatory obligation on the Board to issue any provisional bills for fuel surcharge, monthly, quarterly, or half-yearly during the course of each financial year; secondly apart from merely putting forward such a plea in the course of arguments before us the appellants have not furnished any factual data as to how and in what manner they had fixed the price structure for the different products produced in the appellants' factories.

Yet another point urged on behalf of the appellants was that under Section 49 of the Act, while exercising the power of framing uniform tariffs, the Board was under a duty to apply its mind to all relevant factors but there had been an omission to discharge the said mandatory duty inasmuch as the capacity of the concerned industry to pay for the energy at the rate proposed to be fixed, which is a highly relevant factor, had not been taken into account at all. Clauses (a) to (d) of sub-section 2 of Section 49 enumerated the various matters which the Board shall have regard to in fixing the uniform tariffs and the capacity of any particular industry to bear the energy charge at the proposed rate of levy is not included in the said enumeration. Under the scheme of the tariff fixation incorporated in the section, the tariff is to be uniform subject to the classification of consumers into different categories Under sub-section 3 of the said section, the classification of the consumers into such different categories is to be made only with reference to the nature of the supply, the purpose for which supply is required the geographical position of any area and other like relevant factors. It is not contemplated by the said section or any of the other provisions of the Act that as amongst consumers falling within a specified category different rates are to be charged depending upon the

financial capacity of the particular consumer to pay. On the other hand, the very core of the scheme of Section 49 is that the tariff should be uniform in respect of each class or category. Hence the attack levelled against the tariff fixation on the aforesaid ground, that a relevant factor, namely, that the financial capacity of individual industrial consumers had not been taken into account, is devoid of force.

The appellants in some of the appeals have challenged the subsequent tariff fixation of 1981 also on grounds that are substantially the same as those which we have dealt with above. For the reasons already indicated by us, none of those grounds can be accepted as correct or tenable.

It was urged on behalf of the appellants that the supply of electricity being a monopoly service conducted by an agency of the State, namely, the Board, it must be carried out reasonably and not arbitrarily, that such reasonableness should be reflected in the price fixation and if the prices fixed are arbitrary, they are liable to be called in question before the Courts on the said ground. In support of the above contention, reliance was placed by counsel for the appellants on the decisions of this Court in Akadasi Padhan v. State of Orissa(1), Rashbihari Panda, etc. v. State of Orissa,(2) Vrajlal Manilal & Co. & Ors. v. State of Madhya Pradesh & Ors.,(3) Ramana Dayaram Shetty v. The international Airport Authority of India and Ors.(4) It is well established that where a corporation is an instrumentality or an agency of Government it would, in the exercise of its powers and function, be subject to the same Constitutional or Public Law limitations as apply to the Government and the principle of law inhibiting arbitrary action by Government would apply equally where such a corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and enter into relationship with any person in any manner it likes according to its sweet will. The acts of such a corporation must be in conformity with some principle which meets the test of reasonableness and relevance. In the case before us, the appellants have totally failed to establish that the rates specified in the impugned tariff notifications of 1979 and 1981 are arbitrary and unreasonable.

Section 59 of the Act as it now stands after the amendment of 1978 is in the following terms:

> "59. (1) The Board shall, after taking credit for any subvention from the State Government under section 63, carry on its operations 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 loans, leave such surplus, as the State Government may, from time to time, specify.
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> (2) In specifying the surplus under sub-section (1), the State Government shall have due regarding to the availability of amounts accrued by way of depreciation and the liability for loan amortization and leave.
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> (a) reasonable sum to contribute towards the cost of capital works; and

(b) where in respect of the Board, a notification has been issued under sub-section (1) of section 12A, a reasonable sum by way of return on the capital provided by the State Government under Sub-section (3) of that section and the amount of the loans (if any) converted by the State Government into capital under sub-section (1) of section 66A."

Under the above provision, the Board is under a statutory obligation to carry on its operations and adjust its tariffs in such a way as to ensure that the total revenues earned in any year of account shall, after meeting all expenses properly chargeable to revenue, leave such surplus as the State Government may, from time to time, specify. The tariff fixation has, therefore, to be so made as to raise sufficient revenue which will not merely avoid any net loss being incurred during the financial year but will ensure a profit being earned, the rate of minimum profit to be earned being such as may be specified by the State Government. The learned Attorney General appearing on behalf of the Board has placed before us tabulated statements showing the working results (financial) of the Board in the years subsequent to 1977-78. It is found therefrom that the net result of the Board's working in each of the year 1978-79 to 1981-82 was a substantial deficit or loss. The deficit in 1978-79 was Rs. 15.31 crores, in 1979-80 Rs. 10.21 crores, in 1980-81 Rs. 32.69 crores and in 1981-82 Rs. 18.60 crores. The statement also shows that the revenue earned per unit of electric energy sold was much lower than the actual cost of production incurred by the Board per unit. The cost of production per unit in the four years aforementioned was 51.10 p., 65.10 p., 73.86 p., and 87.16 p. respectively, whereas the revenue per unit was only 3848 p., 47.17 p., 53.07 p., and 66.39 p. respectively. It is thus found that notwithstanding has the mandatory provision contained in Section 69 the Act, the Board been selling energy at rates which are lower than of the actual cost incurred by it per unit of production. Such being the factual situation, there is absolutely no basis for the contention urged on behalf of the appellants that the tariff fixation effected by the Board suffers from the voice of arbitrariness and is liable to be interfered with by the Court on the ground. As pointed out by this Court in Prag Ice & Oil Mills and another v. Union of India, 1 in the ultimate analysis, the mechanics of price fixation is necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of persons, the processual basis of price fixation is to be accepted in the generality of cases as valid.

Some of the appellants have endeavored to persuade us to go into the minutest details of the mechanism of the tariff fixation effected by the Board in an endeavour to demonstrate in relation thereto that a factor here or a factor there which ought to have been taken into account has been ignored. We have declined to go into those factors which are really in the nature of matters of price fixation policy and the Court will be exceeding its jurisdiction if it to embark upon a scrutiny of matters of this kind which are essentially in the domain of the executive to determine, subject, of course, to the Constitutional limitations.

The conclusion that emerges from the foregoing discussion is that the High Court was perfectly right in upholding the validity of the impugned tariff notifications of 1979 and 1981, and these appeals and the S.L.P. have only to be dismissed.

H.S.K. Petitions & Appeals Dismissed.