

**A WESTERN U.P. ELECTRIC POWER & SUPPLY
 COMPANY LTD.**

v.

STATE OF U.P. & ANR.

B March 7, 1969

[J. C. SHAH AND V. RAMASWAMI, JJ.]

C *Indian Electricity Act 9 of 1910 as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam 1961, ss. 3(1) and 3(2)(e)(ii)—Constitution of India Arts. 14 and 31(1) and (2A)—Licencee under s. 3(1) of Electricity Act supplying electricity in certain area—State Government ordering under s. 3(2)(e)(ii) that energy be supplied to a factory in the said area directly by Electricity Board—Whether discrimination results—‘Public interest’, in s. 3(2)(e)(ii)—Satisfaction under section whether subjective—Order of direct supply by Board whether compulsory acquisition of licensee’s property without compensation—Natural justice, whether satisfied.*

D The appellant held a licence under s. 3(1) of the Indian Electricity Act, 1910 to supply electricity in certain areas in the State of U.P. The 3rd respondent was a factory manufacturing electrical equipment in the appellant’s area of supply, and was receiving energy from the appellant. The 3rd respondent made complaints to the State Government that the supply of electrical energy by the appellant was inadequate and fluctuating. There was no improvement in the supply even after discussions between the parties. Thereafter at the request of the 3rd respondent the State Government by order dated December 26, 1961 under s. 3(2)(e)(ii) of the Indian Electricity Act, 1910 as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961 directed the State Electricity Board to supply electrical energy directly to the 3rd respondent. The appellant made representations to the Government against the order but these were rejected. The appellant then filed a writ petition in the High Court which was dismissed by a Single Judge. A Letters Patent Appeal against the decision was also dismissed although the High Court allowed

E the appellant to raise an additional plea based on Art. 14 of the Constitution without allowing further evidence to be given for that purpose. In this Court, in appeal against the High Court’s order it was contended :

F (i) That owing to the different rates at which electricity was supplied by the State Government, there was discrimination, (a) between the 3rd respondent and other consumers, and (b) between the 3rd respondent and the appellant; (ii) That the impugned order of the State Government was not made in the public interest within the meaning of s. 3(2)(e)(ii) of the Act; (iii) That the impugned order amounted to compulsory acquisition of the property of the appellant without compensation; and (iv) That the impugned order was passed in violation of the principles of natural justice.

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H HELD : (i) Article 14 of the Constitution ensures equality among equals : its aim is to protect persons similarly placed against discriminatory treatment. It does not operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no relation to the object sought to be achieved by the law. [870 D]

In the present case, as to the alleged discrimination between the 3rd respondent and the other consumers in the area there was no evidence on record showing the operative rates on the date of the impugned order, and no grievance by any consumer of any prejudicial treatment accorded to him. Further the 3rd respondent and other consumers did not belong to the same class because in the one case energy was being supplied by the appellant and in the other by the Electricity Board. [870 E-G]

Similarly in respect of the alleged discrimination between the 3rd respondent and the appellant there was no evidence that the rates charged by the State Electricity Board to the 3rd respondent were lower than the rates charged to the appellant. The appellant and the 3rd respondent again did not belong to the same class inasmuch as the appellant was a distributor of electrical energy, whereas the 3rd respondent was a consumer. [870 H-871 B]

The plea of violation of Art. 14 of the Constitution on behalf of the appellant, could not therefore be accepted.

The Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. & Ors., A.I.R. 1968 S.C. 1099, distinguished.

(ii) The question whether an order under s. 3(2)(e) as amended by U.P. Act 30 of 1961 is in public interest is not one on which the opinion of the Government is final. If challenged, the Government must show that exercise of the power was necessary in the public interest. The court is thereby not intended to sit in appeal over the satisfaction of the Government. If there be *prima facie* evidence on which a reasonable body of persons may hold that it is in the public interest to supply energy directly to the consumers, the requirements of the statute are fulfilled. Normally a licensee of electrical energy, though he has no monopoly, is the person through whom electrical energy would be distributed within the area of supply, since the licensee has to lay down electric supply lines for transmission of energy and to maintain its establishment. An inroad may be made in that right in the conditions which are statutorily prescribed, but the satisfaction of the Government that the supply is necessary in the public interest is in appropriate cases not excluded from judicial review. [872 B-D]

In the present case there was ample evidence on record to prove that uninterrupted supply of electrical energy to the 3rd respondent was necessary in the public interest and the appellant was unable to ensure it. For maintaining effective working of a large industry which gave scope of employment to the local population and earned foreign exchange, if it was necessary to give direct supply of electrical energy to the 3rd respondent, the order to the Electricity Board to make a direct supply to the 3rd respondent was in the public interest within the meaning of s. 3(2)(e) (ii) of the Act. [872 G; 873 D-E]

(iii) Even assuming that the right to supply electrical energy is property (a question on which the court expressed no opinion) there was in the present case no infringement of the guarantee under Art. 31(2). By cl. (2A) of Art. 31 there is no compulsory acquisition or requisitioning of property unless ownership or right to possession of the property stands transferred to the State or a corporation owned or controlled by the State. By the order granting direct supply of electrical energy ownership of property or right to possession of property was not transferred to the State or to a corporation owned or controlled by the State, and on that limited ground it must be held that Art. 31(2) had no application to the case. [873 G-874 D]

- A** (iv) In view of the fact that the complaints made by the 3rd respondent were discussed with the appellant and that several representations were made by the appellant to the State Government which were considered by the latter and rejected it could not be said that the appellant had been denied natural justice. [874 E-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2482 of 1968.

Appeal by special leave from the judgment and order dated March 18, 1968 of the Allahabad High Court in Second Appeal No. 317 of 1965.

Mohan Behari Lal, for the appellant.

- C** *O. P. Rana*, for respondents Nos. 1 and 2.

C. K. Daphtary, B. R. L. Iyengar, Bishambar Lal and H. K. Puri, for respondent No. 3.

The Judgment of the Court was delivered by

- D** **Shah, J.** The Western U.P. Electric Power & Supply Company Ltd.—hereinafter called ‘the Company’—holds a licence under s. 3(1) of the Indian Electricity Act 9 of 1910 to supply electricity in certain areas in the State of U.P. Messrs Hind Lamps Private Ltd. set up a factory for manufacturing electrical equipment within the area of supply of the Company. Hind Lamps was receiving energy from the Company. Hind Lamps
- E** made several representations to the State Government that the supply of energy by the Company was inadequate to meet its requirements and was ‘interrupted and fluctuating’. Meetings were held between the Company, the State officials and Hind Lamps for devising means to ensure uninterrupted and adequate supply of energy required by Hind Lamps, but there was no improvement in the supply position.
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- Hind Lamps then applied to the Government of U.P. to grant direct supply of electrical energy from the State Electricity Board. The State Government by order dated December 26, 1961, issued in exercise of the powers conferred by s. 3(2)(e)(ii) of the Indian Electricity Act, 1910 as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961, directed the State Electricity Board “to supply electrical energy directly to Hind Lamps upon terms and conditions similar to those on which it supplied electrical energy to other customers”. In reply to a representation to reconsider the decision, the Government informed the Company that the “decision was necessitated in the public interest and there was no justification for revising it”. Another representation made by the Company was also turned down and direct supply of electrical energy was commenced by the State Electricity Board to Hind Lamps.
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A petition moved by the Company in the High Court of Allahabad for a writ of *certiorari* quashing the order dated December 26, 1961 was rejected by R. S. Pathak, J. In appeal under the Letters Patent against the order passed by the learned Judge, counsel for the Company applied for leave to plead that the order dated December 26, 1961, resulted in discrimination between Hind Lamps and other consumers within the area of supply of the Company, and also between Hind Lamps and the Company and the order was on that account invalid. The High Court permitted the Company to raise the contention, but declined to give opportunity to "enlarge the evidence on record at that stage". Sole reliance was therefore placed by counsel for the Company on paragraph-2 of the Government Gazette Notification issued by the U.P. Government on April 24/28, 1962, containing the revised tariff for the supply of electrical energy to licensees obtaining bulk supply from the U.P. State Electricity Board and to other consumers. It stated :

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"The revised tariff shall, except in the case of the licensees, be applicable to consumers in respect of consumption in the month of May 1962. In the case of licensees, obtaining bulk supply of energy from the Board, the revised tariff shall apply to supplies made from 1st July, 1962 and onwards."

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The Schedules in the Gazette Notification set out the rates at which electrical energy was to be supplied by the Board to licensees as well as to diverse classes of consumers who received supply of energy from the Board. The High Court held that there was no evidence on the record to prove the rates at which energy was being supplied to the Company on December 25, 1961, and the rates at which the energy was being supplied to Hind Lamps. The High Court observed that before the order dated December 26, 1961 could be challenged on the ground of discrimination between Hind Lamps and other consumers as also between Hind Lamps and the Company, it was necessary for the Company to establish by evidence the rates of supply of energy to the Company, the Hind Lamps and to the other consumers obtaining at the time of the impugned order, *i.e.* December 26, 1961, and in the absence of that evidence the plea of discrimination must fail.

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The High Court also rejected the contention raised by the Company that the impugned order was not made in public interest, that granting direct supply of electrical energy to Hind Lamps amounted to compulsory acquisition of property of the Company without payment of compensation, and that in refusing to give an opportunity to the Company to object the rules of natural justice were violated.

A The Indian Electricity Act 9 of 1910 makes provision by s. 3 for the grant of a licence to supply energy in any specified area and also to lay down or place electric supply lines for transmission of energy. Clause (e) of sub-s. (2) as amended by U.P. Act 30 of 1961, and sub-s. (3) provide :

B “(2)(e) grant of a licence under this Part for any purpose shall not in any way hinder or restrict—

(i) the grant of licence to another person within the same area of supply for a like purpose; or

C (ii) the supply of energy by the State Government or the State Electricity Board within the same area, where the State Government deems such supply necessary in public interest;”

D “(3) Where the supply of energy in any area by the State Electricity Board is deemed necessary under sub-clause (ii) of clause (e) of sub-section (2), the Board may, subject to any terms and conditions that may be laid down by the State Government, supply energy in that area notwithstanding anything to the contrary contained in this Act or the Electricity Supply Act, 1948.”

E The State Government may grant a licence to supply electrical energy to consumers within a specified area on terms and conditions prescribed in the licence and subject to statutory conditions, but on that account the State Government is not debarred from granting a licence to another person or to supply energy directly to a consumer within the same area if the State Government deemed it necessary so to do in the public interest

F Section 3(2)(e) is challenged on the ground of denial of the guarantee of the equal protection clause of the Constitution. Strong reliance was placed by counsel for the appellant upon a recent judgment of this Court : *The Western U.P. Electric Power and Supply Co. Ltd. v. The State of U.P. and Ors.*⁽¹⁾ In that case the Government of U.P. had by Notification dated September 21, 1966, authorised the State Electricity Board to supply energy directly to consumers in the area of supply for which a licence was already granted. This Court held that a licensee supplying electrical energy in an area has no monopoly under its licence; but the Notification issued by the U.P. Government directing the State Electricity Board to supply energy directly to a consumer at a rate lower than the rate at which it was supplied to the licensee Company amounted to discrimination between that

(2) A.I.R. 1968 S.C. 1099

consumer and the other consumers and also between the consumer and the licensee and the Notification on that account was invalid. Counsel for the Company says that the question which falls to be determined in the present appeal is concluded by the judgment in *The Western U.P. Electrical Power and Supply Company's case*⁽¹⁾, for the Court in that case held that the Notification of the Government of U.P. directing the State Electricity Board to supply energy directly to certain concerns at a rate lower than the rate at which energy was supplied to the licensee Company amounts to discrimination between those concerns on the one hand and the other consumers on the other, and also between the concerns and the Company.

Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law. In the present case there is no evidence about the rate charged for energy supplied by the State Electricity Board to the Company on December 26, 1961, nor is there any evidence on the record about the rates charged for electrical energy supplied to the consumers by the Company.

The plea of discrimination has to be considered from two different points of view—(1) the discrimination between Hind Lamps and the other consumers within the area of supply in respect of which the Company held the licence; and (2) discrimination in the rates of supply charged by the State Electricity Board to the Company and to Hind Lamps. There is no evidence on the record about the operative rates on the date of the impugned order. Again Hind Lamps was a consumer of electrical energy and so were the other consumers within the area of supply in respect of which the Company held the licence. But on that account it does not follow that they belong to the same class. In one case energy is being supplied by the Company and in the other by the State Electricity Board. Again, there is no grievance made by any consumer of energy that he is by the grant of preferential rates to Hind Lamps prejudicially treated. Other consumers of energy and Hind Lamps therefore do not belong to the same class, and there is no grievance by any consumer of any prejudicial treatment accorded to him.

There is also no evidence that the rates charged by the State Electricity Board to Hind Lamps were lower than the rates charg-

(1) A.I.R. 1968 S.C. 1099.

- A** ed to the Company. The Company and Hind Lamps again do not belong to the same class. The Company is a distributor of electrical energy, whereas Hind Lamps is a consumer. If the State Government charged different rates from persons belonging to the same class, in the absence of any rational basis for that treatment, the plea of discrimination founded on differential rates
- B** may probably have some force. But the Company and Hind Lamps did not belong to the same class, and there is no evidence that for energy supplied different rates were charged. In *The Western U.P. Electric Power and Supply Co. Ltd. v. The State of U.P.*⁽¹⁾ the position was different. That case was decided on the footing that the consumer and the Western U.P. Electric Power and Supply Co. Ltd. belonged to the same class, and the
- C** Board charged higher rates from the distributing Company than the rate charged from the third respondent in that case. The Court observed in that case :

“.....the notification and the Government’s direction to the Board therein results in clear discrimination. If the Board were to supply energy directly to the 3rd respondent it has to do so at rates lower than the rates at which electricity is supplied by it to the petitioner company. The petitioner company being thus charged at higher rates from its other consumers with the result that the 3rd respondent would get energy at substantially lower rates than other consumers including other industrial establishments in the area. The notification thus results in discrimination between the 3rd respondent on the one hand and the other consumer on the other as also between the 3rd respondent and the petitioner company.”

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- F** The first contention was, therefore, rightly negated by the High Court.

By the amendment made by U.P. Act 30 of 1961 electrical energy may be supplied by the State Government or the State Electricity Board within the same area in respect of which a licence is granted only if the State Government deems such supply “necessary in public interest”. The High Court observed that

G “the State Government was the sole Judge of the question whether direct supply of energy to Hind Lamps was or was not in the public interest. The test is of a subjective nature, no objective test being contemplated. Thus it is not open to this Court to examine whether it was necessary in the public interest. The subjective opinion of the Government is final in the matter, and the same is not justiciable or subject to judicial scrutiny as to the sufficiency of the grounds on which the State Government has formed its opinion. In other words the Legislature has left

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(1) A.I.R. 1968 S.C. 1099.

it to the sole discretion of the State Government to decide whether a direct supply of energy was in the public interest".

We are unable to agree with that view. By s. 3(2)(e) as amended by the U.P. Act 30 of 1961, the Government is authorised to supply energy to consumers within the area of the license in certain conditions: exercise of the power is conditioned by the Government deeming it necessary in public interest to make such supply. If challenged, the Government must show that exercise of the power was necessary in public interest. The Court is thereby not intended to sit in appeal over the satisfaction of the Government. If there be *prima facie* evidence on which a reasonable body of persons may hold that it is in the public interest to supply energy directly to the consumers, the requirements of the statute are fulfilled. Normally a licensee of electrical energy, though he has no monopoly, is the person through whom electrical energy would be distributed within the area of supply, since the licensee has to lay down electric supply-lines for transmission of energy and to maintain its establishment. An inroad may be made in that right in the conditions which are statutorily prescribed. In our judgment, the satisfaction of the Government that the supply is necessary in the public interest is in appropriate cases not excluded from judicial review.

But the decision of the High Court must still be maintained. The order issued by the Government recited:

"The Governor is satisfied that it is necessary in the public interest for the State Electricity Board to make the supply of electricity direct to the industry (Hind Lamps Private Ltd.) and is, therefore, pleased to order in exercise of the powers vested in him under section 3(2)(e)(ii) of the Indian Electricity Act, 1910 (Act No. IV of 1910) as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961 (U.P. Act No. XXX of 1961) that the U.P. State Electricity Board make the supply of electricity direct to the Hind Lamps Ltd., Shikohabad."

There is ample evidence on the record to prove that uninterrupted supply of electrical energy to Hind Lamps was necessary in public interest, and the Company was unable to ensure it. The only averment made in the petition filed by the Company before the High Court was that "the giving of the supply to Hind Lamps (Private) Ltd. could not be said to be in public interest as required by section 3(2)(e)(ii) of the Indian Electricity Act, 1910 as amended by Indian Electricity (U.P. Amendment) Act XXX of 1961". No particulars were furnished in the petition. In the affidavit filed on behalf of the State Electricity Board it was affirm-

- A** ed that Hind Lamps was engaged in the manufacture of electric bulbs, fluorescent tubes etc. and the process required uninterrupted supply; that it was one of the major industries of the State and was the only industry of its kind in the State; that as a result of the defective supply by the Company, the Hind Lamps felt dissatisfied and informed the Government that if the supply
- B** position was not improved it would be forced to shift its factory from the State to some other State; that the industry gave employment to a number of people in the State and saved a large amount of foreign exchange and on that account the State Government was keen to give it fair and due protection that it deserved; that the total supply of electricity to the Company was 1700
- C** K.W. and even if the entire supply under the agreement was made available by the Company to Hind Lamps it would fall short of its requirements. It was, therefore, in public interest that direct supply of energy should be made available to Hind Lamps. An affidavit containing similar averments was also filed on behalf of the State of Uttar Pradesh.
- D** There is no evidence on behalf of the Company to the contrary. For maintaining effective working of a large industry which gave scope for employment to the local population and earned foreign exchange, if it was necessary to give direct supply of electrical energy to Hind Lamps, the order to the Electricity Board to make direct supply of electrical energy to Hind Lamps
- E** was unquestionably in public interest within the meaning of s. 3(2)(e)(ii) of the Act.

- There is no substance in the contention that by the issue of the order dated December 26, 1961, there was compulsory acquisition of the property of the Company without providing for compensation. By the grant of a licence under Act 9 of 1910 no
- F** monopoly was created in favour of the Company. The statute expressly reserves the right of the State to authorise supply of electrical energy through another licensee in the same area or to a consumer directly through the State Electricity Board. Assuming that the right to supply electrical energy is property (on that question we express no opinion), we are of the view that there
- G** is no infringement of the guarantee under Art. 31(2) of the Constitution. Clause (2) of Art. 31 as amended by the Constitution (Fourth Amendment) Act, 1955, insofar as it is material, provides :

- H** "No property shall be compulsorily acquired . . . save for a public purpose and save by authority of a law which provides for compensation for the property so acquired and either fixes the amount of the compensation or specifies the principles on which, and

the manner in which, the compensation is to be determined and given. . . .”

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Clause (2A) in substance defines compulsory acquisition or requisitioning of property within the meaning of cl. (2). It provides :

“Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.”

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By cl. (2A) there is no compulsory acquisition or requisitioning of property, unless ownership or right to possession of the property stands transferred to the State or a corporation owned or controlled by the State. By the order granting direct supply of electrical energy ownership of property or right to possession of property was not transferred to the State or to a corporation owned or controlled by the State, and on that limited ground it must be held that Art. 31(2) has no application. The Company may, it may be assumed, as a result of direct supply of electrical energy to Hind Lamps, suffer loss; but Art. 31(2) does not guarantee protection against that loss.

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The Company was afforded sufficient opportunity to make its representation before and after the impugned order was passed. Hind Lamps had submitted several representations to the Government of U.P. regarding inadequate and irregular supply of electrical energy. The Company was informed about the complaints made by Hind Lamps. Meetings were held in which certain steps to be taken by the Company to make the supply regular were agreed upon, but they were not carried out, presumably because the Company had not the requisite equipment for that purpose. The Company was asked to supply electrical energy as released in favour of Hind Lamps; it failed to do so. Representations made by the Company, after the order was passed, requesting that the order dated December 26, 1961, be withdrawn, were also considered by the Government and rejected. Adequate opportunity of making a representation was afforded to the Company to satisfy the State Government that it was not in the public interest to supply electrical energy directly to Hind Lamps.

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The appeal fails and is dismissed with costs.

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Appeal dismissed.