PETITIONER:
U.P. ELECT. BOARD THROUGHITS CHAIRMAN & ANR.

Vs.

RESPONDENT:
M/S. TRIVENI ENGG. WORKS LTD.

DATE OF JUDGMENT: 12/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (5) 24 1996 SCALE (4)165

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel for the parties.

This appeal by special leave arises from the judgment and order dated May 4, 1995 made in W.P.NO.23865/90 by the High Court of Allahabad. The admitted facts are that the respondents had entered into an agreement for the supply of electrical energy, initially of 104 KW. The load was mixed type load for industrial purpose as well as for light and fans of the factory under clause [8] of the agreement. Section 48 of the Electrical Supply Act, 1948 empowers the Board to revise the tariffs from time to time. One of the conditions under clause [8] read as under:

> "8(a) The Consumer shall pay for the supply of electric energy at the rates enforced by the Supplier from time to time as may be applicable to the Consumer.
> Provided that in the event of alternative rates being available for that category of load, the consumer shall have the option to choose the tariff that suits him best.
> (b) The rate Schedule applicable to the consumer at the time of execution of this agreement is annexed hereto as Annexure.
> (c) The rate schedule above mentioned met at the discretion of the Supplier, be revised by the Supplier from time to time and in the case of revision the rate schedule so revised shall be applicable to the consumer from such date as may be general or

special order be notified by the Supplier.

Under clause [8] read with Section 48, the appellant-Board has the power to revise the tariffs fron time to time for supply of electrical energy. In exercise thereof on July 13, 1986 the Board revised the tariffs and deleted LMV-10 and substituted various items for the deleted tariffs. As far LMV-10 is concerned, there is no corresponding substitution under the amended tariffs. By operation of rate schedule for HV-2, "large and heavy power", it is provided for any other power consumption to enter under any other rate "schedule" HV-2 becomes applicable.

It is an admitted position that on October 10, 1989, at the request of the respondent, 104 KW of electrical energy was increased to 404 KW and a separate contract was entered into for payment of rates under the tariff. The above revised rates would apply from that date. The only dispute is with reference to the rate applicable for the electricity supplied between August 1, 1986 to October 9, 1989. It is the contention of the respondent-industry that in view of the deletion of LMV-10, the rate of schedule must be LMV-2. As a consequence, the appellant has no power to charge the respondent at the HV-2 rate. That contention found favour with the High Court. The High Court came to the conclusion that since the agreement had become effective from October 10, 1989, the respondent had no right to charge for the previous supply. It is not covered under the agreement. The High Court was not right in reaching the conclusion. It is seen that under the contract entered into by the respondent, they are liable to charge consumption of the electrical energy as per the rates provided in LMV-10. On its deletion w.e.f. July 31, 1986 for the electricity consumed by the respondent, one of the rates applicable should be as provided in the tariff. It is seen that LMV-2 is only for commercial establishments. Since the respondent is an industrial unit, obviously HV-2 would stand applicable only. Since there is no express contract between the parties, the residuary power in HV-2 stands attracted. Accordingly the respondent is liable to pay the charges for the electricity consumed between August 1, 1986 and October 9, 1989 under HV-2 Rates. We are informed that from February, 1986 till July 31, 1986, the bill also has been given for the payment of the charges under HV-2 rates. This is obviously incorrect. They are liable to charge only at the previous rates from the period from February 1986 till July 31, 1986, the date on which the revision was effected. The appellant is, therefore, directed to revise the bill accordingly and make a fresh demand for payment. On demand so made, the respondent is at liberty to pay the same within a period of six months from the date of the receipt of the demand.

The appeal is accordingly allowed. No costs.