

HIGH COURT OF GUJARAT (D.B.)**IIM
Versus
State of Gujarat****Date of Decision:** 01 May 2009**Citation:** 2009 LawSuit(Guj) 278**Hon'ble Judges:** [K S RADHAKRISHNAN](#), [AKIL KURESHI](#)**Eq. Citations:** 2009 AIR(Guj) 113, 2010 4 GLR 2786, 2009 2 GLH 415, 2010 8 RCR(Civ) 2548, 2010 5 RCR(Civ) 2548**Case Type:** Special Civil Application**Case No:** 5113 of 1996**Subject:** Constitution, Electricity**Acts Referred:**[Constitution of India Art 14](#)[Electricity Act, 1910](#) Sec 24(1)[Gujarat Secondary Education Act, 1972](#) Sec 2[Gujarat University Act, 1949](#) Sec 35A[Bombay Electricity Duty Act, 1958](#) Sec 3(3), Sec 4(3).**Final Decision:** Petition dismissed**Advocates:** [Nandish Chudgar](#), [Nanavati Associates](#), [Sunil S Shah](#), [Devang Vyas](#), [K B Pujara](#)**K S RADHAKRISHNAN, C J**

[1] Indian Institute of Management. Ahmedabad (IIMA) along with Dean and Acting Director has approached this Court seeking a declaration that Item (1) of Part-I of Schedule I to 'The Bombay Electricity Duty Act, 1958' (for short 'the Act') as ultravires Article 14 of the Constitution of India and to strike down the same as such, and also for a writ of certiorari quashing and setting aside the decision taken by the respondents to withdraw concessional rate of electricity duty to the petitioner-Institute and also for other consequential reliefs.

[2] Petitioner-Institute is an educational, research, professional and technical Institute of national importance which is an autonomous body registered under 'The Societies Registration Act. 1860'. The primary object of the petitioner-Institute is to provide educational facilities for training young men and women for career in management and related fields in any form of organization, to improve decision making schemes and administrative competence in different management fields and to create knowledge through research, both applied and conceptual, and to assist organizations in solving their management problems. Petitioner-Institute also conducts various kinds of programmes, such as, doctoral level programme known as 'Fellow Programme in Management', 'Post Graduate Programme in Management', 'Faculty Development Programme', 'Management Development Programme', etc. Over and above, the Institute also had arrangement till 31st December, 1992 with Gujarat University to enable its Professors to guide students registered with the University for Ph.D in Management.

[3] Petitioner-Institutes's case is that in an arbitrary manner the benefit of concessional electricity duty extended to it was taken away from December, 1992. From the very beginning, Institute was charged electricity duty @ 60% of the consumption charges, but from February, 1983 onwards petitioner-Institute was charged electricity duty at the rate of 40% of consumption charges till the year 1995.

[4] Collector of Electricity Duty however in the year 1988 informed the petitioner-Institute that since IIMA was not registered under any of the Acts mentioned in the definition of "Educational purpose", and electricity duty would be leviable @ 60% instead of 40%. Institute replied to that letter pointing out that it is an educational institution and be charged electricity duty at the rate of 40%. Respondents withdrew that notice and gave concessional rate of duty at the rate of 40%; of consumption charges. On 31.12.1992, Institutes severed its relationship with Gujarat since it had severely restricted the autonomy of the Institute. Till June, 1995, despite its withdrawal of the relationship under Section 35A of the Gujarat University Act, the respondents continued to charge concessional rate of duty at the rate of 40% only since it was an educational institute of national importance. However, petitioners were served with a notice on 30.06.1995 to show cause why concessional rate of 40% granted to it should not be withdrawn. Later, in August, 1995, Assessment Officer, Electricity Duty, Gandhinagar, had called upon the Institute to furnish details as regards the courses recognised by the Government and the Association of Indian Universities. Attention of the Institute was drawn to the Explanation to Item (1) of Part-I of Schedule 1 of the Act containing the definition of expression "Educational purpose" and the petitioners were asked to reply within seven days. Petitioner replied to the said notice, but the benefit of concessional duty was not extended to the petitioner-

Institute. Consequently, petitioner-Institute started remitting 60% of the consumption charges by way of electricity duty under protest. Later, petitioner-Institute was served with a bill dated 04.07.1996 directing to pay an amount of Rs.46,13,793/-. The bill included the amount of differential amount @ 60% for the period from 31st December, 1992 till 31st December, 1995, i.e., from the date Institute withdrew its relationship with Gujarat University till the date it started making payment @ 60% under protest. Under such circumstances, the petitioner-Institute has approached this Court with the present writ petition.

[5] The second respondent filed counter-affidavit through Commissioner of Electricity, Gandhinagar, stating that petitioner-Institute- could not get the concessional rate of duty since it did not fall within the definition of "Educational purpose" given in Explanation to Item (1) in Part-I of Schedule I of the Act. Further, it is stated that since petitioner-Institute had discontinued its recognition with Gujarat University, it had ceased to be an Institute which falls within the expression "Educational purpose" and therefore advised Ahmedabad Electricity Company Limited, Ahmedabad, to recover electricity duty at the rate of 60% of the consumption charges as specified in the residuary item No.7 of Part I of Schedule to the Act with effect from 31.12.1992.

[6] Collector of Electricity Duty, Gandhinagar however filed an affidavit on 03.07.2006 stating that in exercise of powers conferred under sub-section (3) of Section 3 of the Bombay Electricity Duty Act, 1958, Government of Gujarat in Energy & Petrochemicals Department has issued a Notification on 4th May, 1999 whereby the Government of Gujarat reduced electricity duty payable under Item 7 of Schedule I and II of the said Act to the rate applicable to item (1) of Part I of Schedule I and II of the said Act, since the petitioner-Institute was an Institute of national eminence established for imparting post-graduate education in Management.

[7] The Division Bench of this Court passed an order on 7th March, 2007 directing the Principal Secretary, Government of Gujarat, Energy and Petrochemicals Department to give an opportunity to the Director of the petitioner-Institute to place the Institute's grievances before him. Accordingly, Director of petitioner-Institute was heard by Principal Secretary on 11.04.2007 and after examining oral statements and documents, the Officer came to the conclusion that IIMA was qualified for concessional rate of electricity duty during the period from 1983 till 31.12.1992 as it was recognised by the Gujarat University under Section 35A of the Gujarat University Act, 1949. However, in the year 1993, IIMA was de-recognized by the Gujarat University, therefore, it was not entitled to the benefit of concessional rate of electricity duty from 01.01.1993 onwards. Later, by way of amendment of the Act, IIMA was given the benefit of concessional rate of electricity duty since a Notification to that effect was issued on 04.05.1999.

[8] Petitioner-Institute claimed the benefit of concessional rate of electricity duty under the definition "Educational purpose" given in Explanation to Item (1) of Part-I of Schedule-I, the relevant portion of which reads as under:

"SCHEDULE-I

[See section 3(l)(a)] [Rates of duty payable by consumers other than those referred to in section 2(a)(i) and (ii)]. PART - 1 (1) For energy consumed by a consumer in respect of premises used for residential purposes or educational purposes -o (a) in rural areas 20 per cent of consumption charges (b) in urban areas -(i) where the total 25 per cent of consumption per consumption month does not charges exceed 40 units (ii) where the total 40 per cent of consumption per consumption month does not charges exceed 40 units Explanation.- "Educational purpose" means the purpose of imparting education by an approved school as defined in clause (2) of section 2 of the Bombay Primary Education Act, 1947 (Bom. LXI of 1947), a recognised school as defined in clause (q) or, as the case may be, clause (s) of section 2 of the Gujarat Secondary Education Act, 1972 (Guj. 18 of 1973), or a University established by any law for the time being in force in the State, or a college affiliated to, or an institution recognised or approved, by such University.

(3) For energy consumed 45 per cent of for the use of - consumption charges

(a) (i) hall or

(ii) auditorium used for commercial purpose or let out for any purpose, or

(b) (i) cinema house, or (ii) theatre

(4) for energy consumed by -(a) [x x x] (b) hotels including 45 per cent of residential hotels, consumption restaurants, eating charges houses and lodging and hoarding houses

(5) For energy consumed by an industrial undertaking, not being an undertaking to which item (2) or (4) applies, other than energy consumed in respect of any of its premises used for residential purposes -

(a) where an industrial 20 per cent of undertaking consumption consumes high tension energy

PART-1

(b) where an industrial charges 10 undertaking per cent of consumes exclusively consumption low tension energy charges Explanation I. - Any energy consumed by the industrial undertaking for installation of any additional plants, machineries and equipments of such industrial undertaking shall be construed as energy consumed by such industrial undertaking.

Explanation II. - For the purpose of this item -

(a) "high tension energy" means any energy supplied, the voltage of which exceeds 450 volts under normal conditions subject, however, to the percentage variation allowed by the Indian Electricity Rules, 1956.

(b) "low tension energy" means any energy supplied, the voltage of which does not exceed 450 volts under normal conditions subject however to the percentage variation allowed by the rules aforesaid.

(6) For the energy 5 per cent of consumed in respect consumption of pumping water charges for agricultural irrigation purposes Explanation. - Any energy consumed for lighting in respect of premises used as a pump house shall be construed as energy consumed in respect of the pumping water for agricultural irrigation purposes.

(7) For energy consumed 60 per cent of in respect of any consumption premises not falling charges" under any of the items

(1) to (6) above.

[9] Respondents took up a stand that IIMA is not falling within the expression "Educational purposes". Consequently, the provision applicable to the Institute at the relevant point of time was Item 7 of Part -I of Schedule I of the Act. The term "Educational purposes" as defined under Explanation given in Item (1) of Part - I of Schedule I of the Act include the purposes of imparting education by an approved school as defined in clause (2) of Section 2 of the Bombay Primary Education Act, 1947 (Bom. LXI of 1947), a recognised school as defined in clause (g) or, as the case may be. clause (s) of Section 2 of the Gujarat Secondary Education Act, 1972 (Guj. 18 of 1973), or a University established by any law for the time being in force in the State, or a college affiliated to. or an institution recognised or approved, by such University.

[10] We are of the view that IIMA could not satisfy the above criteria. Hence, it did not qualify for the concessional rate of electricity duty for consumption during 1993 to 1999 as IIMA did not get cover under the category specified for lower electricity duty due to non-affiliation to the Gujarat University. Provision for concessional rate of duty

should normally be construed strictly. Exemption cannot be claimed by a party as a matter of right. Court has to look at the language used by the Legislation and decide as to which categories of cases concessional rate of duty is available. Courts are not entitled to fill in any lacuna in any Act since that is a matter for the Legislature to take note of, even if the Court finds that a particular Institute is eligible for concession. Legislation when selects a special class of institutions for concessional duty, the Court will be disinclined to bring in a contender for exemption, however strong its claim may be. Duty exemption, cannot be claimed as of right or by way of analogy or a priori reasoning. Legislation has a wide discretion of selecting institutions and persons for concessional duty. Such an action cannot be held to be invalid on the ground of violation of Article 14 of the Constitution. Court cannot undertake out of its own notions what is fair to adopt or rearrange a provision for exemption or concession of a fiscal statute. Court has merely to look at what is clearly said, for there is no room for any intentment nor any equity nor for any presumption. Law is well settled that in interpreting the fiscal statute, the Court cannot proceed to make good the deficiencies. If there be any, the Court must interpret the statute as it stands. Deficiencies, if any, have to be rectified by the Legislature.

[11] In the instant case, Legislature did so by amending the Act in 1999 bringing in IIMA, an Institute of national eminence, for concessional rate of duty. Legislature in its wisdom thought that concessional duty be extended to only to approved schools as defined under clause (2) of Section 2 of the Bombay Primary Education Act, 1947 a recognised school as defined in clause (g) or, as the case may be, clause (s) of Section 2 of the Gujarat Secondary Education Act, 1972 or a University established by any law for the time being in force in the State, or a college affiliated to, or an institution recognised or approved, by such University. IIMA does not fall in the above categories, hence, it was not entitled to get concessional rate of electricity duty for the years 1993-1999. Legislature later thought it fit to extent the benefit of concessional duty to IIMA as well, consequently, a Notification was issued on 04.05.1999 and from that date onwards IIMA became eligible for concessional rate.

[12] In view of the above factual situation, we are of the view that the petitioner-Institute is not entitled to get the benefit as prayed for and in our view, the decision taken by the Principal Secretary, Government of Gujarat, Energy and Petrochemicals Department is perfectly in order.

[13] Learned counsel appearing for the petitioner-Institute brought to our knowledge the letter dated 30.09.1995 issued by the Assessment Officer requesting Ahmedabad Electricity Company Limited, Ahmedabad to issue supplementary bill from 31.12.1992 to 31.08.1995 and also issue bill @ 60% henceforth for their entire consumption except for the falling use for which a statement showing the service number is

enclosed, i.e., Staff residence (40%), Student hostel (45%), Married students quarters (40%) and Auditorium (Community Hall) (45%) and stated that if the Institute fail to pay supplementary bill within the prescribed time limit, action be resorted to under Section 24(1) of Indian Electricity Act, 1910 read with Section 4(3) of the Bombay Electricity Duty Act, 1958. Learned counsel submitted that since the Institute is having several residential quarters, students hostels, auditorium, etc..they are entitled to get concessional rate of electricity duty to that extent. Petitioner-Institute, if so advised, may address their grievance before the appropriate authority, who will examine the same and take appropriate decision.

[14] With the above observations. Special Civil Application is dismissed. Interim relief granted stands vacated. Rule is discharged.

