

DELHI HIGH COURT

Haryana Ice Factory, M/s

Vs.

Delhi Municipal Corpn., (Delhi)

C.W.P. No. 2844 of 1984.

(S. S. Chadha, J.)

15.3.1985

JUDGEMENT

S. S. Chadha, J.

1. These petitions under Article 226 of the Constitution of India by consumers of electric energy supplied by Delhi Electric Supply Undertaking of the Municipal Corporation of Delhi seek the quashing of the impugned demands from the petitioners for additional amount of cash security deposit which falls short of the energy charges equal to consumption of three months in case of monthly billing and four months in case of bi-monthly billing.

2. An Act to consolidate and amend the law relating to the Municipal Government of Delhi was enacted and received the assent of the President of India on Dec. 28, 1957. The Act is called the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Corporation Act). One of the obligatory functions of the Municipal Corporation of Delhi (for short called the Corporation) is the construction or purchase, maintenance, extension, management and conduct of any undertaking for the generation or supply and distribution of electricity to the public. For the efficient performance of its functions, various municipal authorities have been enumerated and the Delhi Electric Supply Committee (for short called the DESC) is one of them. The DESC is responsible for the conduct and management of the Delhi Electric Supply Undertaking (for short called the DESU) and for the efficient discharge of such responsibility exercises such powers and performs such functions as are conferred or imposed by or under the Corporation Act. The DESU means all undertakings vested in or acquired and organized, constructed, maintained, extended, managed or conducted by the Corporation for the purpose of generating or acquiring supplies of electricity

and providing supplies (including bulk supplies) of electricity for licensees and persons other than licensees and includes all properties and rights vested in the Corporation for the purposes of such undertakings. Chapter XIII of the Corporation Act deals with the electricity supply. By virtue of definition contained in Section 274, the word 'licensee' has the same meaning as in the Electricity Act, 1910 (hereinafter referred to as the Act). Section 277 of the Corporation Act provides that subject to the provisions of the Corporation Act, the Corporation shall in respect of the whole of the Union Territory of Delhi, have all the powers and obligations of a licensee under the Act and Chapter XIII shall be deemed to be the license of the Corporation for the purposes of the Act. There is a proviso that nothing in Sections 3 to 11 of, or in cls.I to IX of the Schedule to, the Act relating to the duties and obligations of a licensee shall apply to the Corporation. These provisions show that DESU is a Municipal authority within the meaning of the Corporation Act and hence a statutory body. The Corporation is a licensee within the meaning of the Act as the license is granted under Section 277 of the Corporation Act. It has all the powers and obligations of a licensee under the Act.

3. Section 2(h) of the Act defines 'licensee' meaning any person licensed under Part II to supply energy. Section 3 of Part II deals with the grant of licenses. A licensee is any person or body of persons to whom the State Government may have granted a license to supply energy in any specified area. So far as the Corporation is concerned, it is a licensee by a deeming license granted under Section 277 of the Corporation Act. Clause (f) of sub-section(2) of Section 3 of the Act provides that the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to such additions, variations or exceptions which the State Government is thereby empowered to make, apply to the undertaking authorized by the license. The Schedule contains certain provisions which are deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied to or excepted by the license. Clause VI of the Schedule heavily relied upon by the petitioners, reads as under:-

"VI. Requisition for supply to owners or occupiers in vicinity.- (1) Where after distributing mains have been laid down under the provisions of Cl.IV or Cl.V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the

licensee shall, within one month from the making of the requisition or within such longer period as the Electrical Inspector may allow supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition :

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it -

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition, and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property :

Provided, secondly, that the licensee shall be entitled to discontinue such supply -

(a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days, after the service upon him of notice from the licensee requiring him so to do....."

Sub-section(1) of Section 21 restricts the power of a licensee to prescribe any special form of appliance for utilizing energy supplied by the licensee or in any way control or interfere with the use of the energy supplied by him. Sub- sec.(2) of Section 21 reads as under :-

"(2) A licensee may, with the previous sanction of the State Government, given after consulting the State Electricity Board and also the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may, with the like sanction given after the like consultation, add to or alter or amend any

such conditions; and any conditions made by a licensee without such sanction shall be null and void....."

Conditions of supply in exercise of the powers conferred by sub-section(2) of Section 21 of the Act were made by the Corporation to regulate the relations with the consumers. Clause 9 relevant for these cases reads as under :-

- "9. Security:

(a) The Undertaking may require every consumer to deposit security as prescribed in the schedule annexed hereto as Annexure 'G' against payment of his monthly bills for energy supplied. The security deposits may be in the form of cash or Government bonds. Simple interest at the rate of 2+⁰% per annum or such other rate as the Undertaking may fix from time to time shall be paid by the Undertaking on cash securities deposited with the Undertaking by the permanent consumers for supply for Industrial and Commercial purposes. The interest on the amount of security deposited in cash calculated for each completed period of 12 months shall be credited to the amount of the consumers. No interest shall be paid on security deposited by residential and commercial lighting and domestic power consumers.

(b) The consumer on demand shall from time to time renew or replenish the security deposit, in the event of the same becoming exhausted or insufficient. The Undertaking shall be at liberty at any time and from time to time to appropriate and apply the amount of security so deposited as aforesaid in or towards payment or satisfaction of all or any money which shall become due or owing by the consumer to the Undertaking in respect of the supply of energy or otherwise, but the provisions contained in this clause shall not prejudice any other remedy to which the Undertaking may be entitled for the recovery of such amount."

Annexure 'G' contains the scale of miscellaneous charges for service connections, testing, security deposit. The Corporation resolved to revise the conditions of supply in exercise of powers under sub-section(2) of Section 21 of the Act and sought approval from Delhi Administration. The approval of the Lt. Governor, Delhi for the revision of miscellaneous charges and security deposit was conveyed in the letter dated Jan. 23, 1981 (Annexure 'A' to the counter- affidavit). After the approval of the Delhi Administration, Annexure 'G' to the conditions of supply was revised. An office order dated Feb.11,1981 to that effect was issued by DESU (Annexure 'B' to the counter-affidavit). In case of industrial power, a security deposit of Rs. 100/- per K. W. or part thereof in case of monthly billing and Rs. 200/- per K.W. or part thereof in

case of bi-monthly billing was specified. It further provided that the consumer on demand shall from time to time replenish security deposit in case the above amount falls short of the energy charges equal to consumption of three months in case of monthly billing and four months in case of bi-monthly billing. The impugned demands have been raised by the DESU thereafter on the petitioners on varied dates.

4. The petitioners had earlier entered into separate but identical agreements with the DESU for the supply of electric energy required for industrial purposes. Under these agreements, the DESU undertook to provide a supply of electric energy to the petitioners upon the terms and conditions set forth in the agreements. Clause 15 deals with the payment for supply. The consumer has to pay each month to DESU for electric energy supplied during the preceding month such amount as shall be calculable and as ascertained in accordance with the rates (Schedule LIP attached thereto). The petitioners are eligible for whatever reduction or rebate as may be granted on the rates and are also liable to pay for whatever surcharge or increase in those rates as may from time to time be levied or made by the DESU. The petitioners are required to pay the bill or bills irrespective of any difference or dispute which may occur as to the accuracy of the sums involved in any bill. If the consumer fails to pay the amount of any bill due under the agreement within 15 days from the date of the presentation of the bill referred to, he has to pay surcharge of 2% for each month or part of a month for which the bill remains to be paid from the date of presentation. Under this clause, the DESU reserves the right to disconnect the supply in the event of non-payment in accordance with Section 24 of the

Act after giving the consumers 7 days clear notice of its intention to disconnect the supply of electric energy and if the payment is not received on the expiry of such notice, it may forthwith disconnect the supply until payment of all the outstanding obligations. Clause 18 provides for the security deposit reading as under:-

"18. The consumer shall when required by the Undertaking deposit with it the sum of Rs..... as security for the performance of the terms and conditions of this agreement and shall on like requisition from time to time renew or replenish such security, in the event of the same becoming exhausted or insufficient. The Undertaking shall be at liberty at any time and from time to time to appropriate and apply the security so deposited as aforesaid in or towards payment or satisfaction of all or any money which shall become due or owing by the consumer or Undertaking in respect of the supply of energy or otherwise under this agreement but the provisions contained in this clause shall

not prejudice any other remedy to which the Undertaking may be entitled for the recovery of such amount."

Clause 23 provides that the agreement shall be read and construed as subject to in all respects to the relevant provisions of the Electricity (Supply) Act, 1948 and the Act and the rules and regulations made there under or any subsequent amendments or modifications thereof. Clause 25 contains the arbitration agreement.

5. The main submission of the learned counsel for the petitioners is that the provisions of proviso to sub-Clause (1) of Cl.VI of the Schedule to the Act do not empower DESU to ask for additional security from the consumers in relation to the value of energy on the ground that the original security furnished by the petitioners has become insufficient on account of the fact that the rate for supply of the energy has been enhanced. The security deposit by the petitioners at the time of the execution of the agreement was in relation to the sanctioned load or the cost of service-line and the units of energy consumed are totally irrelevant for the purposes of calculation of the demand for security. The amount of security under said Cl.VI is such as will assure to the licensee at the current rates charged by him an annual revenue not exceeding 15 per centum of the cost of the service-line required to comply with the requisition. It had nothing to do, says the counsel, with the security for safeguarding any financial interest of the licensee for the energy consumed. The security contemplated is for the purpose of binding the consumer to take supply of energy for not less than two years and it had nothing to do with the security that may be taken by the licensee under the agreement entered into with the consumer for payment of the bills for consumption of an energy. Reliance is heavily placed on the decision of "*Modi Industries v. U.P. State Electricity Board*",¹

6. Another facet of the same submission is that even under Clause 18 of the agreement, DESU is not entitled to demand any additional security from the petitioners. The conditions of supply and the agreement pursuant thereto entered into between the petitioners and DESU do not authorize or confer any power on DESU to demand any sum by way of additional or further deposit of security pursuant to upward revision of the schedule of miscellaneous charges. According to the counsel, there are five features of Clause 18 of the agreement and Clause 9(b) of the conditions of supply. The use of the expression "renew" or "replenish" postulates that the DESU can demand further sums by way of security deposit only upon depletion of the existing security deposit but not exceeding the figure stipulated in the agreement. The use of the expression "exhaust" or "insufficient" indicates that what was contemplated

was exhaustion of the existing security deposit on adjustment of the entire amount, or insufficiency in the existing security deposit on adjustment of a part of the amount towards unpaid charges. The clause when read as a whole, says the counsel, itself throws light on the expression "renew" and "replenishment" as well as the expression "exhaust" or "insufficient" inasmuch as the clause itself provides for the mode and manner in which the security deposit may be exhausted or rendered insufficient and thereby require renewal or replenishment. The language of Clauses 15 and 18 of the agreement shows that while the rate chargeable for electricity supplied would vary from time to time depending upon the tariff in force, that is not so in respect of the security deposit where the amount is specifically mentioned. The absence of any provision for refund or rebate in case of downward revision of the schedule of miscellaneous charges, unlike Clause 15, concludes the counsel, would itself show that the security deposit was contemplated as one-time payment during the currency of the agreement.

7. The counsel for the petitioners also vehemently contends that Section 21(2) of the Act does not confer the power to demand security deposit for payment of monthly bills. It is urged that if any conditions are framed under Section 21(2) which enabled the Corporation to demand additional amount of cash security deposit which falls short of the energy charges equal to consumption of three months in the case of monthly billing and four months in the case of bi-monthly billing, then such conditions would be in excess of the authority delegated. The scheme of the Act, according to the counsel, does not contemplate any provision for security deposit for energy charges; thus it is clear that it is not open to the licensee to impose any extra financial burden on the consumers unless specifically authorized by the Act.

8. The three submissions are over-lapping and may be dealt with together. In my view, there is legislative sanction behind the power of the Corporation to demand security deposit which falls short of the energy charges equal to consumption of three months. Section 21(2) enables a licensee to make conditions to regulate his relations with persons who are or intend to become consumers. It is permissible to make conditions for the purpose of regulating the relations of the licensee with the consumers. The consumers may be existing consumers or those persons who intend to become consumers. The legislature has employed the words "who are". It further empowers the licensee to add to or alter or amend any such conditions. There are two pre-requisite requirements. Firstly, the original conditions of supply or the modifications in it can only be made with the previous sanction of the State Government, given after

consulting the State Electricity Board and also the local authority, where the licensee is not the local authority. This condition precedent has been satisfied. The licensee is a local authority as noticed above. The approval of the Lt. Governor, Delhi for the revision of the miscellaneous charges and security deposit contained in Annexure 'G' to condition No.9 of the Conditions of Supply was conveyed in the said letter dated Jan. 23, 1981. The mandatory requirement of prior sanction has been complied with in these cases. The second restriction contemplated is that the conditions must not be inconsistent with the Act or with its license or any rule made under the Act.

9. The conditions of supply promulgated earlier under Section 21(2) of the Act govern the relationship between the parties. The existing agreements have been entered into between DESU and the petitioners who are the consumers of the energy. The condition regarding security deposit had been noticed earlier. Clause 9 of the conditions of supply (reproduced earlier) empowers the DESU to require every consumer to deposit security deposit as prescribed in the schedule annexed thereto as Annexure-'G' against payment of his monthly bills for energy supplied. The security is for the performance of the terms and conditions of the agreement; Clause 15 of which provides for the payment by the consumer each month to the DESU for the electrical energy supplied during the preceding month. In the event of default the DESU is at liberty at any time to appropriate and apply the security so deposited in or towards payment or satisfaction of all or any money which may become due or owing by the consumer to DESU in respect of the supply of energy or otherwise under the agreement. It is not controverted by the counsel at the Bar that the petitioners have already furnished security deposit respectively in the sum mentioned in para 18 of each agreement and the sum represents the security deposit as prescribed in the Schedule 'G' against payment of his monthly bills for energy supplied. There is no challenge in these writ petitions that the original demand of security deposit at the time of entering into agreements is null or void or without jurisdiction. They have also accepted the term in Clause 18 of the agreement that the consumers shall on requisition from time to time renew or replenish the security in the event of the same becoming exhausted or insufficient. The enhancement of the security deposit by amending Schedule 'G' would make the existing security insufficient. This has to be replenished. The petitioners have accepted these terms by the agreement and are bound by it.

10. It has not been demonstrated by the counsel for the petitioners as to how the condition providing for security deposit of an amount of energy charges equal to

consumption of three months is inconsistent with the Act or the Rules. In exercise of the powers conferred by Section 37 of the Act, the Central Electricity Board has made the Rules called the India Electricity Rules, 1956. Section 37 empowers the framing of the Rules to regulate generation, transmission and supply and use of energy. Rule 27 says that without prejudice to the powers conferred by Section 21 on the State Government in this behalf, the model conditions of supply contained in Annexure VI may, with such variations as the circumstances of each case requires, be adopted by the licensee for the purpose of sub-section(2) of that section with the previous sanction of the Government. Clause 14 of the model form of draft conditions of supply enables the licensee to require any consumer to deposit security deposit for the payment of his monthly bills, for energy supplied, for the value of the meter and other apparatus installed on his premises. No interest will be allowed on deposit up to Rs. 25/-. Interest at the rate of per cent per annum will be paid by the licensee on deposits exceeding Rs. 25/-. The licensee shall be at liberty at any time to apply any security deposited towards payment or satisfaction of any money which shall become due or owing by the consumer. The licensee shall also be at liberty to demand enhanced security deposit from consumers at any time during the life of the contract. The balance of the security deposit will be returned to the consumer on the termination of the contract. The consumer may at any time, with the previous consent of the licensee transfer the contract and its liabilities to any other person approved by the licensee. The conclusion is inevitable that the rulemaking authority itself contemplated that one of the conditions of supply permissible under Section 21(2) is a condition relating to the security contained in Clause 9 and cannot be inconsistent with the Act or the Rule.

11. The conditions of supply have been framed by reason of the statutory power conferred under Section 21(2) of the Act. They have the force of law by reason of its sustenance from the statute. They are not in the nature of administrative instructions in respect of working the relations between the licensee and its consumers. The conditions of supply are ancillary and sub serve the purpose of regulating the relations with persons who are or intend to become consumers. A licensee is entitled to impose any reasonable conditions which would enable him to recover or secure the energy charges consumed. The licensee is entitled to manage its commercial activities in such a way that it does not incur any loss or enter into unnecessary litigation with the consumers for recovery of energy charge when it is permissible to secure the payments. It would be a prudent commercial condition of supply. I am fortified in this view by a decision of a Division Bench of Bombay High Court in *Municipal Corporation for Greater Bombay v. M/s. Devidayal Metal Industries*", It was held :-

"Now, undoubtedly the conditions which are contemplated by Section 21(2) must not be inconsistent with the Act or the license or the Rules made under the Act. Such conditions are permissible to be made for the purposes of regulating the relations of the licensee with the persons who are or intend to become consumers. We have no manner of doubt that a condition providing for a security to guarantee the payment of bills in respect of energy supplied to a consumer will be a condition regulating the relation between the licensee and the consumer. The licensee is the seller or the supplier of energy and the consumer is buyer of energy. If there is a condition which provides for safeguarding the interest of the seller so as to make recovery of the price of the energy supplied easy, it is difficult to entertain a submission that such a condition does not deal with the relations between the licensee and the consumer. Even Section 37(1) which contains the general rule-making power enables the Central Electricity Board to make rules to regulate *inter alia* the supply and use of energy. Where rules are permitted to be made to regulate the supply and use of energy, this will obviously include a condition which could be attached to the use of energy in the form of securing the payment of bills."

12. In "*Kistna Cement Works, Tadepalli v. Secy. APSEB, Vidyut Sougha, Hyderabad*",³, a similar question arose before the Andhra Pradesh High Court about the power of the Board in demanding security deposit in cash representing three months' consumption from the consumers of electrical power. Section 49 of the Electricity (Supply) Act, 1948 empowers the Board to supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and, for the purpose of such supply, frame uniform tariff. Construing these provisions an earlier Bench decision was quoted with approval:-

"What the Board has now done is to change the terms of the agreement so as to entitle it to demand deposit of security in cash. Another term, which has been altered, is this: Previously, the Board was insisting upon paying two months' average consumption charges and that has now been raised to three months. Under the Indian Electricity Act, the Board is under an obligation to supply electrical energy when a requisition is made by the owner or occupier of any premises. The Indian Electricity Rules empower the Board to require any consumer to deposit security for the payment of his monthly bills for the energy supplied and for the value of the meter and other apparatus installed on his premises. On deposits over and above a sum of Rs. 25/-, the Board pays interest at the rate of 3% per annum. The rules also provide that the Board shall be at

liberty to demand enhanced security deposit from consumers at any time during the life of the contract. It is thus manifest that the Board is vested with the power to demand sufficient security as a guarantee for payment of bills and it is also empowered to raise the security deposit."

13. The Rajasthan High court in "*M/s. B. P. Oil Mills, Bharatpur v. Asst. Engineer (D) R.S.E.B., Bharatpur*",⁴ also considered a similar question. Section 79 of the Electricity (Supply) Act, 1948 deals with the powers of the Board to make regulations and under Clause (j), the Board has power to make regulations providing principles governing the supply of electricity by the Board to persons other than licensees. Regulations were framed by the Board in exercise of the powers under Sections 49 and 79 of the said Act and Regulation 20 read with Part II thereof provided for the security deposit of Rs. 15/- per BHP of connected load or three months' estimated consumption charges, whichever is higher. The view taken by the Andhra Pradesh High Court was followed and it was held:-

"The petitioner has only a right of supply of energy upon furnishing sufficient security as provided under the regulations framed by the Board under Section 49 read with Section 79 (j) of the Supply Act. Therefore, it cannot be said that the demand by the Board of the security from the petitioner has no legislative sanction. Firstly, the question of unilaterally changing the condition of the agreement so far as the demand of security is concerned does not arise in the facts and circumstances of the case, and secondly, the Board is demanding the security under the regulations, as aforesaid, and the petitioner is bound by them."

14. From the year 1968 Haryana Electricity Board introduced a condition in the standard contract for supply for taking a sum equal to the energy bill for about two months on the average from every consumer to ensure timely clearance of bills. In case of industrial consumers, the security which was initially worked out at Rs. 30/- per K.W. was raised to Rs. 100/- per K.W. with effect from April 1, 1981. Some of the consumers filed writ petitions under Article 32 before the Supreme Court challenging the enhancement. Clause 22 of the standard contract for supply stipulated the security deposit. Clause 31 reserved the right of the Board to revise schedules of tariffs and charges and conditions of supply. Their Lordships held:-

"Under Clause 31 of the agreement the Board reserved to itself the right to amend, cancel or add to any of the schedules and conditions at any time. The provisions of this clause are similar to Clause 13 of the agreement which came

to be considered in Bisra Stone Lime Company Case. We are, therefore, inclined to take the view that the Board had authority under the agreement itself to amend the conditions. In exercise of that power the Board has now raised the additional demand. We have already taken note of the fact that there has been a steep escalation in the tariff. Counsel for the Board placed before us a statement which indicates that while tariff has gone up almost four times, the demand for security raised by the Board is much less - it is a little more than two times of the original security."

The views taken by the High Courts of Andhra Pradesh, Rajasthan and Punjab and Haryana were approved and that of Allahabad in Modi Industries' Case AIR 1979 Allahabad 375 was over-ruled.

15. I, therefore, hold that the licensee has, been conferred with statutory power under S.21(2) of the Act to regulate its relations even with the existing consumers by amending the conditions of supply. The amendment of Annexure 'G' in Clause 9 of the Conditions of Supply providing that the consumers on demand shall from time to time replenish security deposit in case the amount already deposited falls short of the energy charges equal to consumption of three months in case of monthly billing and four months in case of bi-monthly billing, is permissible, was made with the sanction of Lt. Governor, Delhi and is not inconsistent with the Act or the Rules.

16. Clause VI of the Schedule heavily relied upon by the petitioners, in my view, does not stand in the way of the Corporation at all in making the impugned demands from the consumers. The Corporation is a licensee within the meaning of the Act as the license is granted under Section 277 of the Corporation Act. The proviso to Section 277 says that nothing in Sections 3 to 11 of, or in clauses I to IX of the Schedule to the Act relating to the duties and obligations of a licensee shall apply to the Corporation. If Clause VI of the Schedule imposes any duty or obligation on the licensee or it restricts its rights that it can only demand security for a limited time and the security will lapse after two years of the commencement of the supply have expired or the security can be demanded only at a time when the initial supply is given, then the limitations are inapplicable by virtue of the proviso. Apart from the powers given under Section 21(2), the demand by the licensee for security from consumers is even permitted under Schedule (cl) VI(1) First proviso (a). Chandurkar Ag. C.J. in "Greater Bombay Municipal Corporation's case (supra) has referred to the scheme of Clause VI in para 21 of the report and came to the conclusion that the licensee is entitled under this clause to demand sufficient security from the consumers for payment of bills

equivalent to the approximate amount of three months' bill. I am in respectful agreement with the reasoning and the view expressed and would adopt the same.

17. It is next urged that even if Section 21(2) does confer the power to lay down the conditions for demanding security for payment of monthly bills, it does not empower the licensee to amend the conditions of supply in a manner so as to abrogate or modify subsisting agreements. There is nothing in Section 21 which would show that any amendment of the conditions of supply would pro tanto amend or modify the subsisting agreements. Reliance is heavily placed on the decision of the Supreme Court in "*Indian Aluminium Co. v. K.S.E. Board*",⁵ In that case it was held that neither Section 49 nor Section 59 of the Electricity (Supply) Act, 1948 confers any authority on the Board to enhance the rates for supply of electricity where they are fixed under stipulation made in an agreement and that the Board has no authority under either of these two sections to override a contractual obligation and enhance unilaterally the rates for the supply of the electricity. Support is taken from "*Dowty Boulton Ltd. v. Woberhampton Corporation*",⁶ wherein it was held that where a power is exercised in such a manner as to create a right extending over a term of years, the existence of that right pro tanto excludes the exercise of other statutory power in respect of the same subject matter.

18. It must be remembered that in the case of Indian Aluminium (supra) the agreement was entered into in exercise of the powers conferred by Section 49(3) of the said Act. Section 49(3) confers power on the Board to fix special tariff for a consumer if the geographical position of the area, the nature of the supply, the purpose for which the supply is required and other relevant factors, so warrant. Fixation of special tariff would be as a result of negotiations between the Board and the consumer and hence a matter of agreement entered into in the exercise of a statutory power. The Board is not given any power under Section 49(3) to vary the stipulations contained in the agreement. There was also no provision in the agreement with regard to the revision of tariff. It is on these facts that the opinion was rendered by the Supreme Court. Along with Indian Aluminium case (supra), the Supreme Court also decided the case of M/s. Titagarh Paper Mills Ltd. (Paras 30 to 39 of the judgment). In the latter case the Board had reserved the power under Clause 13 of the agreement to buy the coal-surcharge and the decision to levy the coal-surcharge could be justified by reference to this power. The question was again considered in "*M/s. Bisra Store Lime Co. Ltd. v. O.S.E. Board*",⁷ for enhancement of rates of tariff by way of surcharge. The challenge that since there have been special agreements between the parties the stipulated rates could

not be increased by adding the surcharge in question, was negatived. It was observed that the submission fails to take count of Clause 13 of the agreement with regard to the revision of rates. "The ratio of Indian Aluminium (supra) will be available on all fours only where there is nothing in the special agreement with regard to the revision of rates during the subsistence of the agreement". In these cases the power to demand additional security is by virtue of Clause 9 of the Conditions of Supply and Clause 18 of the agreements entered into. These reserve the right to the licensee to modify the contractual obligation.

19. In case of *Dowty Boulton (Supra)* (1971) 2 All England Reporter 277, Clause 5 there did not enable the Corporation to override any right in the land in question which might be vested in another party. It is on these facts that it was ruled there that the Corporation is not entitled to override the right either under the terms of the conveyance or in exercise of its statutory powers.

20. The last contention of the counsel for the petitioners is that the cash security deposit now demanded is patently arbitrary, unreasonable and excessive in law. The licensee is unjustified in demanding cash security as the conditions of supply give an option to the consumers to furnish security by Government Bonds. Rate of interest of 2+ $\%$ per annum in Clause 9 is branded as illusory. The Supreme Court has increased the interest to 10% per annum in *Jagdamba's case* AIR 1983 Supreme Court 1296. They urge that the period for which the security is demanded i.e. an amount equal to energy charges consumed for a period of three months in case of monthly billing and four months in case of bi-monthly billing, is wholly unrealistic to the situation. Relying on "*E. P. Royappa v. State of Tamil Nadu*",⁸ it is submitted that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated. Reference is also made to "*Ramana v. I.A.A.*",⁹ to urge that where the Government is dealing with the public, the Government cannot act arbitrarily at its sweet will and, like a private individual. The State of Haryana which is a much bigger State and which has far greater number of LIP consumers and whose consumers are spread over a much larger terrain require only 60 days to complete its billing cycle and have taken the security of an amount equal to energy charges equal to consumption of two months as noticed by the Supreme Court in *Jagdamba's case* (supra). There is, therefore, no reason, according to the counsel, as to why the DESU should require 90 days to complete its billing cycle. Another facet of this submission is that a substantial dispute as to the quantum of monthly bills has

been referred by this Court for arbitration. The dispute referred is whether the fuel adjustment charges which is a part of the energy charges recoverable from the petitioners, have been fixed and are being demanded by DESU from time to time in accordance with the tariff for the year in question. There is a strong *prima facie* case, says the counsel, in favor of the petitioners which is indicated by the fact that the Hon'ble Supreme Court of India found it fit to grant a partial stay of recovery of fuel adjustment charges demanded by the DESU. It is, therefore, unreasonable, according to the petitioners, to demand cash security deposit on the basis of such disputed monthly bills.

21. It is clear from the counter-affidavit of the DESU that the security deposit is being demanded and taken provisionally to cover the consumption charges which are payable on monthly or bi-monthly billing as there is a time lag of 3 or 4 months respectively between the consumption, billing, payment and in case of default resultant disconnection. It is stated in these words :-

"The Petitioner is sent a monthly bill. It means that the bill includes the consumption for 30 days. In addition, about 15 days' time is taken for completion of readings; another 7 to 10 days for preparation and issue of the bills; another 15 days is the minimum notice normally given for making the payment. Apart from above, 15 to 20 days' time is required for confirmation in regard to the receipt of payment and issue of disconnection notice, etc. in cases where the disconnection is to be carried out. Accordingly, the complete cycle works for about 90 days and, therefore, the LIP consumers are being asked to deposit security deposit amount equal to average consumption of three months and the demand for additional security is reasonable and fully justified."

The respondents have also demonstrated before me by production of the meter reading book and some copies of the electricity bills. In case of the petitioners who are LIP consumers, the meter reading is phased between 15th to the end of the English calendar month. This is evident from the meter reading book and the bills; and, therefore, it is correct to say that about 15 days' time is taken for completion of the readings of the energy already consumed for a month. The billing in these cases before me is monthly billing. Then the preparation and issue of the bills also take about one to two weeks. Under the terms of the contract and conditions of supply a minimum of 15 days' time is required to be given for making payment of the bills. The date of payment given in the bills for energy is generally the last 3 or 4 days of the English calendar month. Under Section 24 of the Act, discontinuance of the supply to

the consumer can only be after giving not less than seven clear days' notice in writing to the consumer. This all makes up approximately a period of three months.

22. The DESU in the year 1983 appointed a high powered Sub-committee consisting of Shri Kanwaljit Singh, Shri B. P. Misra and Shri P. P. Srivastava to look into the various aspects, such as statutory provisions, rationale/basis etc. on which additional security has been demanded from various categories of consumers and the implementation thereof. The Committee gave a detailed report and recommended:-

"The Committee after examining the legal provisions as also the practical aspect of the problem recommends as follows :-

(i) Revised rates of security charges as effective from 1-3-1981 should be applicable in case of new connections under various categories.

(ii) Payment from existing consumers towards additional security deposit should be worked out on the basis of actual consumption for three consecutive months in the case of monthly-billing and four months in the case of bi-monthly billing, as approved. In case, the same works out to be more than the security deposit already made, the difference in the amount worked out as above on actual consumption basis and the amount already deposited shall only be charged.

(iii) The recovery of additional security should be affected in three equal installments in the case of bi-monthly billing and six installments in the case of monthly billing along with the bills."

23. In Jagdamba's case (supra), their Lordships of the Supreme Court considered the justification given by the Andhra Pradesh Electricity Board for demanding enhanced security for three months consumption charges. The view taken by the Andhra Pradesh High Court in Kistna Cement Works (supra) accepted by the Rajasthan High Court was quoted with approval. The power in those cases was thus impliedly held to be neither exercised arbitrarily nor unreasonably. The Bombay High Court in Greater Bombay Municipal Corporation (supra) also considered the argument whether three months' period is arbitrary. It was held:-

"Coming to the argument that three months' period is arbitrary, in our view, it would not be permissible to go into this question because unless the period is so large that it appears *prima facie* to be unreasonable, the discretion of determining the approximate amount of bills which have to be safeguarded and provided for must be left to the licensee. The argument of Mr. Singhvi was that if the statutory procedure preceding the actual disconnection is to be gone

through, it takes a sufficiently long time. Mr. Hidayatullah, on the other hand, pointed out that if the licensee acts strictly in accordance with the statute, at the end of two months the licensee would be in a position to take recourse to its drastic power under Section 24. The only difference, according to Mr. Hidayatullah, was that instead of three months, two months' guarantee should have been enough. The licensee has to cater to a large number of consumers and having regard to the fact that the bills for one month are sent some time in the course of the next month, because taking of readings of the meters and dispatching of bills is bound to take considerable time where large number of consumers are involved, it is obvious that a strict mathematical calculation as to the time and procedure involved and permissible under the Act cannot be the only guide for determining whether two months' guarantee should have been taken and, therefore, three months' security was unreasonable. We are not satisfied in the instant case that asking for a security for bills for a period of three months would be unreasonable."

24. The demand of the security by the Corporation is correlated to the consumption pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non-payment of the charges due. This Court cannot enter into mathematical calculations to come to a conclusion that instead of three months, it should be 2+ months. The fixing of the period of security equal to energy consumption of three months is reasonable. The rationale or basis on which the additional security had been demanded was gone into by high-powered Committee appointed by the Corporation and they found a reasonable basis for the demand of the security deposit. It may be that the Haryana Electricity Board has fixed the period of security deposit equal to the amount of energy consumed for a period of two months but that would depend upon the billing cycle adopted by the Haryana State Electricity Board. The Supreme Court accepted the view of the Andhra Pradesh High Court followed by the Rajasthan High Court who held that it is reasonable on the part of the Board to require security for three months consumption charges. I, therefore, do not find the demand of the Corporation either arbitrary or unreasonable.

25. On the cash security deposit, according to Clause 9 of Conditions of Supply, the rate of interest payable is 2+% per annum. The Rajya Sabha Committee on Subordinate Legislation, while considering the conditions of supply framed by the Corporation with the approval of the Lt. Governor, Delhi, touched on certain matters which pertained to the total variation of the scheme of security deposit. It had

observed that the rate of 2+% cannot be considered reasonable and that it needs to be revised. It had enquired whether DESU is at all making the payments of interest even to the categories which are entitled to receive it. Their Lordships of the Supreme Court indicated to the counsel for the Haryana State Electricity Board that security amount should bear the same interest as admissible on fixed deposits of scheduled banks for a term of years. The Board's counsel agreed to enhance the rate of interest to 10% with effect from Oct. 1, 1983. I am told that the interest admissible on the fixed deposits of nationalized banks for long term of 5 years and above is 11% per annum. Clause 9 in the Conditions of Supply providing for an interest of 2+% is unrealistic and illusory. The clause would deem to have been amended to read the interest at the rate of 11% per annum on the cash security amount when deposited by the consumer.

26. The next question to be considered is the scope and effect of the words "Government Bonds" used in Clause 9 of Conditions of Supply. The decision to demand the security deposit is of the undertaking but the option as to the nature of security whether in the form of cash or Government bond is with the consumer according to the language employed in Clause 9. There is no definition of the words "Government bond" either in the Act or in the Rules or in the conditions of supply promulgated by the Corporation. The DESU may require the consumer to deposit security as prescribed in the schedule annexed thereto as Annexure 'G' against payment of his monthly bills for energy supply. The definition of Government security given in the Public Debt Act, 1944, Public Debt Rules, 1946 and Public Debt (Compensation) Bonds Rules, 1954 is invoked by the Corporation's counsel to give a restricted meaning to the words "Government Bond" used in Clause 9. It is well-settled that the definition of the term of one statute does not afford a guide to the construction of the same in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. An interpretation clause is an aid to the interpretation of the statute in which it occurs and has no effect on other statutes whether they are prior or subsequent to the statute in which the interpretation clause occurs.

27. The Government bond is demanded as a security to guarantee the payment of the bills in respect of energy supplied to a consumer for a period of three months. The word "Government bond", therefore, has to be construed in a wider sense. The bond, instrument or document should be such as would enable the Corporation to immediately encash the security to enable the Corporation to appropriate or apply the

amount of security in or towards payment or satisfaction of all or any money which may become due or owing by the consumer to the undertaking in respect of the supply of energy. The bank guarantees have assumed great significance in the present commercial system and in securing payments and obligations under the contracts. An elaborate system has been built up on the footing that the banks would always honour without any demur. The bank guarantees issued by a nationalized bank is a well-known prudent and commercial method of securing the payments and is being adopted in transactions by the private parties as well as between the State and private parties. The fixed deposit receipts issued by the nationalized banks and endorsed in favor of a third party is another method which is recognized in the commercial relationships for securing the future payments. The Government bonds in various series issued from time to time is only one of the modes adopted and accepted to secure the amounts but restricted to the cashable value of that security. There is no basis to restrict the meaning of the word "Government Bond" used in Clause 9 of the Conditions of Supply to the Government Securities under the Public Debt Laws.

28. The last point to be dealt with is the pendency of the dispute as to quantum of the fuel adjustment charges which is a part of the energy charges recoverable from the LIP consumers. Section 283 of the Corporation Act gives the power to DESC to fix charges for the supply of electricity by the Corporation. The charges can be fixed at such rates as may be fixed by DESC within the approval of the Corporation. The levy of the fuel adjustment charges in the fixing of the rates and the method in which the rates are to be determined is in exercise of statutory power. The dispute that has been raised is whether the charges have been worked out in accordance with the formula or not. The pendency of the dispute or the partial stay granted by the Supreme Court only means that the fuel adjustment charges demanded by the Corporation are under challenge. This cannot prevent the operation of Clause 9 of the Conditions of Supply. Mr.V.P. Singh has fairly conceded that in case the quantum of the three months' bills is reduced, the DESU would refund the excess security deposit. This should amply safeguard the interest of the petitioners in case of their success.

29. The result of the above discussion is that there is legislative sanction behind the power of the Corporation to demand security deposit which falls short of the energy charges equal to consumption of three months. The demand of the security by the Corporation is co-related to the consumption pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non-payment of the charges due. This demand is neither arbitrary nor

unreasonable. However, it is the option of the consumers to furnish security of Government Bond or cash security. In case of cash security it would bear interest at the rate of 11 % per annum and not 2+% per annum as stipulated in Clause 9. Since a stay of recovery of the impugned demands was operating during the pendency of the writ petitions, I would grant three months' time to make the security deposits by three equal monthly installments payable by the end of March, April and May, 1985.

30. Except to the extent indicated, the writ petitions fail and are hereby dismissed. There will, however, be no order as to costs in all these cases.

AAA Order accordingly.

Cases Referred.

1. AIR 1979 Allahabad 375.
2. AIR 1984 Bombay 242.
3. AIR 1979 Andhra Pradesh 291
4. AIR 1981 Rajasthan 108
5. AIR 1975 Supreme Court 1967.
6. (1971) 2 All England Reporter 277
7. AIR 1976 Supreme Court 127
8. AIR 1974 Supreme Court 555
9. AIR 1979 Supreme Court 1628