

DELHI HIGH COURT

Gulab Rai

Vs.

Municipal Corpn., Delhi

Civil Writ Petn. No. 1740 of 1989

(B. N. Kirpal And C. L. Chaudhry, JJ.)

1.3.1990

JUDGEMENT

B.N. KIRPAL, J.

1. The challenge in this bunch of writ petitions, which are being decided by this common judgment, is to the resolution of the Municipal Corporation of Delhi whereby it approved the proposal of the Delhi Electricity Supply Committee to enhance minimum consumption guarantee charges from Rs. 40/- per KVA to Rs. 340/per KVA in respect of Arc/ Induction furnaces.

2. The petitioners have set up/installed furnaces for the manufacture of castings and have their factories in Delhi. These furnaces have been set up after having obtained valid licenses from the respondent-Corporation for the manufacture of castings.

3. One of the important raw-materials for the petitioners is electricity. Each of the petitioner ha: obtained electricity from the respondents and the sanctioned load is more than 100 KWS.The exact sanctioned load varies, depending upon the size and capacity of the furnaces set up by the different petitioners, but each one of them has a sanctioned load of more than 100 KWS.

4. According to the petitioners, Section 283 of the Delhi Municipal Corporation Act, 1957, hereinafter referred to as 'the Corporation Act', empowers the respondent No. 1 to levy charges for the supply of electricity on such rates as may be fixed from time to time by the Corporation in accordance with law. For the purpose of charging the consumers, respondent No. 1 has divided the consumers in different categories/ classes providing for different tariffs for each category. The categories are (I) domestic (II) non-domestic (III) small industrial

power (IV) Large Industrial Power (LIP) and (V) Agricultural. The consumers who have a sanctioned load of 100 KWS fall in the category of large industrial powers. 5. The petitioners fall under this category as each one of them has a sanctioned load of more than 100 KWS. For the levy of charges for the supply of electricity there are two systems of tariff which are followed, one is the flat rate system and the other is known as two-part tariff system. Under the former, a flat rate is charged on the units of energy consumed while the latter system is meant for big consumers of electricity i.e. industrial power, and it is comprised of two charges (1) minimum consumption guarantee charges (called demand charges), and (2) energy charges for the actual amount of energy consumed.

6. It is the two-part tariff system which is applicable to the petitioners, who are large industrial power consumer. Under this system an LIP consumer pays a minimum guarantee consumption charges at the rate fixed by the respondent. If the LIP consumer does not consume the specified minimum quantity of electricity or no energy at all even then he has to pay the minimum guarantee charges. But in case the consumer consumes more electricity than what is prescribed by the minimum guarantee charges then the consumer pays the minimum guarantee charges and also pays the electricity charges for the actual consumption of electricity, beyond the minimum guarantee charges, in such a manner that the minimum guarantee charges are merged in the total bill for electricity consumed and a rebate is given to the consumer. In other words, if a consumer consumes more than the specified minimum quantity of electricity then, in effect, he will pay for electricity which is actually consumed by him.

7. For the period from 1985-86 to 1988-89 the respondents had fixed rates of minimum consumption guarantee charges at the rate of Rs. 40/-per KVA for 1000 KVA and Rs. 38/- per KVA above 1000 KVA. The tariff for the LIP consumers in respect of the aforesaid period, including the minimum guarantee charges, as fixed by the respondents was as follows:

"(d) Tariff

Demand charges

First 1000 KVA of billing demand for the month, Rs. 40.00 per KVA or part thereof

All above 1000 KVA of billing demand for the month, Rs. 38.00 per

KVA or part thereof.

Energy charges

First 5,00,000 units per month at 85 paise per unit.

All above 5,00,000 units per month at 84 paise per unit.

Subject to:

a maximum overall rate of Rs. 1.10 per KVA without prejudice to the minimum payment as laid down in item (g) below and adjustment clause at (xvii) above under General Conditions of Applications".

Item (g) of the said tariff prescribes that the minimum bill would be the amount of the demand charges based upon the KVA of billing demand. Item (g) reads as under:

"(g) Minimum Bill

The amount of the demand charges based upon the KVA of billing demand."

8. The billing as per the aforesaid tariff has been explained by the petitioners with the following illustration

"(a) If a consumer with a sanctioned load of 1000 KVA does not consume any energy in a given month, he would be liable to pay the minimum guarantee charge of Rs. 40,000/- i.e. 1000 KVA (sanctioned load /contracts demand) x Rs. 40/- (minimum guarantee charge) = Rs. 40,000/-

Even if he consumes electricity, but the value of the units actually consumed by him works out to less than Rs. 40,000/- which is the minimum consumption guarantee charges, even then he will have to pay the minimum consumption guarantee charges of Rs. 40,000/-.

(b) In the event one consumer consumes energy of the value of more than Rs. 40,000/-, then the billing would be done in the following manner:-

Assuming that the consumer consumes 80,000 units of electricity-

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1000 KVA (sanctioned load) X 40 - (rate of minimum guarantee charges)=	Rs. 40,00 0/-
80,000 (units consumed) 0.85 paise (energy charge) per unit =	Rs. 68,00 0/-
Total	Rs. 1,08, 000/-

In terms of the tariff, maximum charge cannot be more than the overall rate of Rs. 1.10 per unit consumed. Therefore, 80,000 units consumed would be chargeable at the maximum rate of Rs. 1.10 per unit which works out to Rs. 88,000/-. Since the amount of Rs. 1,08,000/- is higher than Rs. 88,000/- i.e. by Rs. 20,000/- a rebate of Rs. 20,000/- would be given to the consumer and the consumer would be billed only for Rs. 88,000/-.

It would be thus evident from the above illustration that the consumer, in any event, has to pay the minimum guarantee charge even if the value/price of the energy actually consumed is more than the minimum consumption guarantee charges, the amount of the minimum consumption guarantee gets merged into with the energy charges."

9. It appears that the General Manager of respondent No. 2 wrote a letter dated 24th January, 1989 to the Delhi Electric Supply Committee, inter alia, proposing revision of rates of minimum consumption guarantee charges in respect of arc/ induction furnaces. In this letter the General Manager gave the figures of the fixed expenditure per KW per month. It was stated that the rates of minimum consumption guarantee were fixed in 1985 and the increase in fixed expenditure per KW per month necessitated the revision of rates of minimum consumption guarantee charges. It was also mentioned that transmission and distribution losses were quite high and they fell into two categories, namely, technical losses and commercial losses. The cause for commercial losses was explained by the General Manager in the following words:

"The commercial losses are also attributed to pilferage/fraudulent abstraction of energy etc. The minimum consumption guarantee being quite low also attributes to the tendency of fraudulent abstraction of energy. After giving a serious thought to reduce the pilferage," fraudulent abstraction of energy, it has been felt desirable to revise the rate of minimum consumption guarantee to a reasonable level so that consumers are not attracted for such unfair means and the rates are commensurate with the fixed expenditure being measured by the undertaking."

In the proposal contained in the letter, there was no suggestion for increase of minimum consumption charge for domestic category but for other categories increase was recommended and in respect of arc/induction furnaces the increase for minimum consumption guarantee charge was to be Rs. 340/- instead of Rs. 40/- per KVA.

10. It appears that the aforesaid proposal contained in the letter dated 24th January, 1989 was discussed by the Delhi Electric Supply Committee in its meeting held on 9th March, 1989 and the case was referred back to the General Manager to inform the Committee whether the respondent was recovering its dues from the bulk supply consumers based on their actual consumption. Pursuant thereto, the General Manager wrote a letter dated 23rd March, 1989 to D.E.S.C., inter alia, stating that the billing is normally done on the basis of the consumption recorded in the meters but in many instances it has been noticed that meters were found to be defective. The consumption recorded was found to be much less than the consumption which was recorded in the previous year and, when compared to the connected load, the consumption was found to be extremely less in many cases causing loss of huge amount to the Undertaking. It was further stated in this letter that for the aforesaid reason "the proposal was put up to D.E.S.C. for levy of higher minimum consumption charges in the case of Arc/induction furnaces on the basis of their load. It is worth mentioning that these furnaces normally run continuously and, therefore, levy of minimum charges is considered justified."

11. The aforesaid proposal of the General Manager was accepted and by Resolution dated 30th March, 1989 Delhi Electric Supply Committee recommended to the Corporation that the proposed revised rates of minimum consumption guarantee charges be approved only in respect of plastic and arc/induction furnaces in their respective categories.

12. Pursuant to the aforesaid resolution of the Committee, the Corporation also, vide resolution dated 1st May, 1989 approved the enhancement of the minimum consumption guarantee charges only in respect of arc/induction furnaces to Rs. 340/- per KVA or part thereof instead of Rs. 40/- per KVA.

13. The present writ petitions have been filed by owners of arc/induction furnaces challenging the aforesaid increase in the minimum guarantee demand charges. While issuing notices to the respondents, interim orders were passed restraining the respondents from disconnecting electricity on account of non-payment of bills subject to the condition that security in respect of the disputed amounts is furnished by the petitioners. Rule nisi was issued and counsel for all the parties were heard at length.

14. One of the main contentions raised on behalf of the petitioners was that the provisions of Section 21 of the Indian Electricity Act, 1910 apply and the decision to increase the minimum charges is contrary to Section 21(2) of the said Act.

Section 21(2) reads as follows:

"21(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:

Provided that any such conditions made before the 23rd day of January; 1922, shall, if sanctioned by the State Government on application made by the licensee before such date as the State Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this sub-section."

It is submitted by the learned counsel for the petitioners that changing the rates at which minimum charges are to be realized amounts to altering or amending the conditions of supply and this cannot be done without the

previous sanction of the State Government. Admittedly the State Government has not, in the present case, granted the approval for the change in the rates and, therefore, the proposed increase is in violation of Section 21(2).

15. Shri Sibal submitted, on behalf of the respondents, that Section 21(2) is not applicable. It was argued that Section 21(2) applies where the licensee has been granted a license pursuant to an application made under the Act and as in the present case the license has been granted to the M.C.D. without any such application having been filed, the said provision is not applicable. In other words, when the licensee is a Municipal Authority, Section 21(2) does not apply.

16. As we read Section 21(2), it is clear that the word "licensee" means any licensee. What it states is that action can be taken under Section 21(2) by a licensee with the previous sanction of the State Government and that the State Government will give the sanction after consulting the State Electricity Board and also the local authority. The words "where the licensee is not the local authority" qualify the immediately preceding words and would mean that the local authority is to be consulted by the State Government only if the licensee is not the local authority, which means that if the licensee is the local authority the State Government is to grant sanction only after consulting the State Electricity Board but where the licensee is not the local authority then sanction is to be accorded by the State Government after consulting State Electricity Board as well as the local authority. It is, therefore, not right to contend that Section 21(2) will have no application where the licensee is the local authority.

17. The question, nevertheless, arises that even if the local authority is the licensee in the present case, are the provisions of Section 21(2) attracted?

In the present case, an agreement had been entered into between the petitioners and DESU. The said agreement contained the conditions of supply including a clause with regard to the payment of electricity charges. Clause 15(a) and (b) of the agreement, which is relevant, reads as follows:

"15(a) The consumer shall pay each month to the Undertaking for electrical energy supplied during the preceding month such amount as shall be calculated and ascertained in accordance with the Rate-Schedule L.I.P. attached hereto. The rates contained in the schedule are those in

force at the time of executing this agreement. The consumer shall be eligible for whatever reduction or rebate as may be granted on the rates and shall be liable to pay for whatever surcharge or increase in those rates as may from time to time be levied or made by the Undertaking. Any other method of charging decided by the Undertaking shall also be applicable.

(b) If at any time the consumer is prevented from receiving or using electrical energy to be supplied under this agreement whether in whole or in part owing to all or any of the causes mentioned in clause 5 of this agreement or if the Undertaking is prevented from supplying or is unable to supply such electrical energy owing to all or any of these causes then the minimum charge payable by the consumer shall be reduced in proportion to the ability of the consumer to take, or the Undertaking to supply such power."

The rate schedule in respect of L.I.P. which was attached thereto specified the minimum demand charges which were payable at that time. By the impugned decision of the respondents the minimum demand charges have been increased. The contention of the petitioners is that this amounts to altering or amending the conditions of supply and requires the sanction of the State Government. We are unable to agree with this contention. The condition of supply contained in the aforesaid agreement, and clause 15 in particular, clearly specified that the consumer shall pay such rates as may be levied, from time to time, by the Undertaking. By increasing the rate this condition, namely that the consumer will pay such rate as fixed by the Undertaking is not altered. In fact the consumers/petitioners had agreed that any other method of charging may be decided by the Undertaking and that would be applicable to the petitioners. Be that as it may, increasing the minimum demand charges cannot be regarded as amending the conditions referred to in Section 21(2) of the Act. Section 21(2) refer to such conditions which are meant to regulate the licensee's relations with persons who are or intend to become consumers. It is only those conditions regulating the relations between the licensee and the consumer, which are amended or altered which require the previous sanction of the State Government. Conditions regulating the relations between the parties are not altered or amended merely by the change in the rate schedule when the consumer has expressly accepted, as a condition, that whatever rate is levied

shall be payable by him.

18. In this connection it maybe pertinent to note that under the Electricity Act it is Section 23 which specifically provides for charging for energy. The said section does not provide for sanction of the State Government being obtained at the time of varying the electricity rates. Section 23 is not made subject to the provisions of Section 21 of the Act. This shows that the Act itself does not regard the varying of the rate as being a condition regulating the relation of the licensee with the consumer as contemplated by Section 21(2) of the Act. In any case, the point in issue is no longer *res integra*. A question like the present was sought to be raised before the Supreme Court in the case of *Gopisetti Venkatratnam v. Vajayawada Municipality*,¹ In that case an agreement had been entered into between the consumer and the licensee-Municipality whereby the consumer agreed to pay the current official scale of rates. The Municipal Council increased the rates and a suit was filed by the consumer in which it was, *inter alia*, contended that such a resolution had been passed without obtaining the previous sanction of the State Government under Section 21(2) of the Electricity Act and, therefore, the same was void. While affirming a decision of the Andhra Pradesh High Court, on the same point, reported as AIR 1962 Andhra Pradesh 342, the Supreme Court observed that by increasing the rates there was no alteration of any condition of the agreement within the meaning of Section 21(2) thereof. In this connection it was held that "we have held that under para IV of the agreement that was entered into between the consumers and the licensee, the consumers agreed to pay the rates that were fixed by the Municipality from time to time. If the said term was a condition within the meaning of Section 21(2) of the Act, there was no change at all in that condition, for the change in the rates was not in derogation of the condition but in terms of it. To state it differently, the same condition embodied in para IV of the agreement continued to operate between the parties even after the rates were enhanced under the impugned resolution. Therefore, no sanction of the State Government was necessary for enhancing the rates." Applying the aforesaid observations in the present case, the same condition embodied in clause 15 of the agreement continued to operate even though the rates were enhanced.

19. It was then sought to be contended that minimum guarantee charges can only be levied under the provisions of the proviso to Section 22 of the Act. It was submitted that under proviso to Section 22 the licensee can only charge that amount which will give it a reasonable return on the capital expenditure and cover standing charges incurred by it in order to meet the possible maximum demand. According to the learned counsel, the respondents have to satisfy the Court that the minimum demand charges have been raised to Rs. 340/- from Rs. 40/- and that the additional capital expenditure had been incurred which would justify Rs. 340/- being charged as a reasonable return on the said capital expenditure.

20. In support of the contention that minimum demand charges can be levied only with a view to secure a reasonable return on the capital expenditure incurred, reference was made to a number of decisions, which we shall presently consider.

21. The first decision relating to the levy of minimum charges is that of the Calcutta High Court in the case of *Saila Bala Roy v. Chairman, Darjeeling Municipality*,² It was held in that case that Section 23(3)(c) did not authorize the licensee to levy minimum charges without any agreement with the consumer. It was, however, observed that the minimum charges are really based on the principle that every consumer's installation involved the licensee to incur certain amount of capital expenditure in plant and mains on which he into have a reasonable return. The learned Judge, however, did not hold that minimum charges can be levied only under proviso to Section 22. On the contrary, it was held that minimum charges could be levied if it was so provided in the agreement between the licensee and the consumer.

22. In the case of *Kaka Ram Tej Bhan v. Khattar Electrical Engineering and General Supply Co. Ltd*³ minimum charges were sought to be recovered by the licensee. The licensee had framed a rule for recovering this charge. It was held that the rule had riot been approved by the State Government and, therefore, minimum charges could not be recovered. This again is no authority for the proposition that minimum charges can only be levied under the proviso to Section 22.

23. In the case of *Amin Chand v. Jullundur Electric Supply Co. Ltd.*,⁴ a Division Bench had occasion to consider the question of levy of minimum

charges. In that case the consumer was receiving electrical energy from low tension ranges of the licensee. The consumer wanted to obtain larger quantity of electrical energy. As the increased demand could not be met from the existing mains, the company agreed to provide the energy by drawing high tension lines from the power house and the construction of a new sub-station which was to be situated on land belonging to the consumer. A formal agreement for selling the required amount of electrical energy was entered into between the parties which contained a clause providing for payment of a minimum guarantee. It was in this connection that reference was made by the Division Bench to the proviso to Section 22. Section 22 was applied because the consumer had a separate supply of electricity and it was at his request that the licensee drew high tension lines from the power house and constructed a new substation. It was observed that, in assessing damages on account of non- payment by the consumer, the provisions of Section 22 proviso could be invoked as it would provide adequate machinery for determining with precision the minimum annual sum which will give licensee a reasonable return on the capital expenditure and other charges.

24. In the case of *M/s. Watkins Mayor and Co. v. Jullundur Electric Supply Co. Ltd.*,⁵ another Division Bench of the Punjab High Court came to the conclusion that the whole scheme of the Act showed that the provision made in any contract for a minimum charge is really to provide for a fair return on the outlay of the licensee and it is for this reason that the law allows a contract to be entered into providing for payment of minimum charges. Reliance was placed by the Division Bench on the observations of the Calcutta High Court in *Saila Bala boy's case*, (supra) while observing that the licensee gets a return on the capital expenditure when energy is actually consumed and when no energy is consumed the licensee is allowed to charge minimum charges but these minimum charges are really a return on his capital outlay incurred for the particular consumer.

25. Learned counsel for the petitioners referred to the decision of the Bombay High Court in the case of *Babulal Chhaganlal Gujerathi v. Chopda Electric Supply Co. Ltd.*,⁶. That case is of little assistance to the petitioners. The licensee had obtained a license from the Government and clause 9 of the license set out the limits of the rates which could be charged by the licensee company for the supply of electrical energy. The licensee sought to realize standing charge. The Bombay High Court held that the license granted by the

Government did not allow the imposition of such a charge and, therefore, this imposition was held to be illegal. In the present case, there is no such prohibition. In fact minimum charges were being realized and what has now happened is only that the rate has been increased.

26. In the case of *Maharashtra State Electricity Board v. M/s. Madhu Sudandas and Brothers*,⁷ the revision of tariff as a result of which the consumer had to pay more, and which tariff included payment of minimum billing demand charges, came up for consideration before the Division Bench of the Bombay High Court. The agreement between the consumer and the licensee contained a clause to the effect that the consumer shall pay for the energy supplied at the prevalent rates. The tariff rates were increased and the licensee claimed payment at the higher rates by virtue of the said clause in the agreement which made it obligatory on the consumer to pay for the energy supplied at the prevalent rates. The High Court held that the Board did not have unbridled discretion for fixing the tariff and that, having regard to the provisions of the Electricity Supply Act, 1948, it could not be said that the agreement of the consumer to pay according to the tariff which may be in force from time to time was illegal or void. It was also sought to be contended that the minimum demand charges were not part of the tariff, but the Court held that the demand charge was apart of the tariff and, by virtue of the agreement between the parties, the consumer was bound to pay the same as well as the charge for the actual energy consumed.

27. The question with regard to the validity of the minimum charge also came up for consideration before the Madras High Court in the case of *M.G. Natesa Chettiar v. Madras State Electricity Board*,⁸ In that case minimum charge was levied under an agreement which had been entered into between the licensee and the consumer. It was contended on behalf of the consumer that the provision of the minimum charge was by way of a penalty and was ultra virus. Repelling this contention, the Court observed as follows:

"In my view the minimum fixed is only consideration for keeping the energy available to the consumer at his end; it is not a penalty for not consuming a stated quantity of energy. I would view it as a concession shown up to the amount fixed, energy at the specified rates could be consumed free, consumption beyond only has to be paid for."

The learned Judge also relied upon the decision of the Punjab High Court in Watkins Mayor's case (supra). It was, however, argued that the said decision was based on the provisions of Clause XI-A of the Schedule, which had since been deleted. Clause XI-A of the schedule was as follows:

"A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made."

While noticing that the said Clause XI-A had been deleted from the statute book, though it had authorized the levy of the minimum charge, Natesan, J. nevertheless observed as follows:

"But to start with, there is no provision in the relevant Acts prohibiting or precluding the insertion of a clause for payment of minimum charge in any contract between a licensee or the Board and the consumer. Only the term has to be in conformity with the provisions of the Act and the Rules made there under. If a statutory basis for the term is required. Section 22 of Act IX of 1910 itself provides it".

The learned Judge then referred to the proviso to Section 22 as well and observed that under that provision the duty or obligation to pay minimum annual sum is placed on the consumer.

28. Dealing with a case which related to Section 49 of the Electricity Act, 1948 which empowered the Board to supply electricity to any person on such terms and conditions as may be fixed from time to time and also authorized it to frame uniform policy for the purpose of the supply, the Allahabad High Court in the case of *Hari Shankar v. U.P. State Electricity Board*,⁹ held that the term 'tariff' includes within its ambit not only the fixation of rates but also rules and regulations relating thereto. When the electrical supply is being made on the footing that the consumer will pay the minimum guaranteed charges, this charge is one of the terms or conditions for supply and fixation of this would be included in the fixation of rates for the-supply of electricity.

29. In the case of *The Gujarat Electricity Board v. Shri Rajratna Naranbhai*

*Mills Co. Ltd*¹⁰ the Court was considering a case where there had been an agreement between the consumer and the licensee regarding payment of minimum charge for bulk supply. The company liable to pay the minimum charges had been ordered to be wound up and it was sought to be contended that the provision with regard to minimum charges was by way of penalty. Repelling this argument the Division Bench, while referring to the earlier decisions in the case of *Saila Bala Roy* AIR 1936 Calcutta 265 and *Watkins Mayor* (supra) and that of *Maharashtra State Electricity Board* (supra) of Bombay High Court, observed that the provision for minimum charge in the agreement between a consumer and a licensee is but one of the modes of providing for reasonable return to the licensee for the investment that it has made and on the capital outlay that it has made and, merely because the agreement provides for a minimum charge, it cannot be said that the terms are on reasonable or that a monopoly concern has taken undue advantage over the consumer in the area of supply. In that case the charge was held to be payable by virtue of the agreement which had been entered into between the consumer and the licensee.

30. The Kerala High Court in the case of *Ratanlal Murarka v. Kerala State Electricity Board*,¹¹ was concerned with the case where the agreement between the consumer and the Electricity Board provided that the consumer shall pay to the Board, on demand, minimum payment at the tariff rates in force for so much of any service line as may be laid down or placed for the purpose of supply beyond 15 metres from the nearest supply point of the Board. The consumer was also liable to pay to the Board on demand the meter minimum or any other minimum charges at the tariff rates. in force and the minimum guarantee amount for the extension of lines, if any, carried out by the Board for effecting supply to his premises. After referring to earlier decisions of the various High Courts, it was noted that Sections 22 and 23 afforded statutory basis for the levy of imposition of the monthly minimum charge.

31. Learned counsel for the petitioners sought to place reliance upon the case of *M/s. Devidayal Metal Industries v. The Municipal Corporation for Greater Bombay*,¹² That case is, however, of little assistance to the petitioners because the question which arose in Devidayal's case was whether demand for security deposit was warranted or not. It was held that there could not be any agreement which was contrary to the Act. That case did not deal with the imposition of the minimum demand charges and nor did the single Judge of the Bombay High

Court consider any of the decisions of the various High Courts relating to the payment of minimum demand charge.

32. A Division Bench of the Rajasthan High Court held in *D.C.M. Ltd. v. Assistant Engineer*,¹³ that the first proviso to Clause VI of the Schedule to the Act of 1910 and the proviso to Section 22 of the said Act indicated that there could be a liability of the consumer to pay minimum charges which would ensure a reasonable return on the capital expenditure incurred by the Board to meet the possible maximum demand of the consumer and this amount, as indicated by the first proviso to Clause VI, should not exceed 15% of the cost of the service line required to comply with the requisition of the consumer. These statutory provisions, it was held, provided for the consumer's obligation to pay minimum charges specified by the Board and require him to execute an agreement containing such a condition in order to make it obligatory for the Board to supply electricity to that consumer. The minimum charges were held to be payable by the consumer so as to ensure a reasonable return on the capital expenditure incurred by the Board.

33. The last decision to which reference need be made is that of the Supreme Court in the case of *Bihar State Electricity Board, Patna v. M/s. Green Rubber Industries*, In that case an agreement had been entered into between the consumer and the Board whereby electricity was to be supplied. The agreement provided that it would not be determinable before a period of two years and that the consumer would also be liable to pay minimum guarantee charges. As the bills were not paid the Board discontinued the supply. It also raised a demand for minimum guarantee charges for the unexpired period of the agreement. The agreement, which postulated payment of the minimum guarantee charges, was challenged. The Supreme Court referred to the decisions of the various High Courts relating to the levy of minimum guarantee charges. The Supreme Court held that the clause with regard to the payment of minimum guarantee charges could not be said to be unreasonable "inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties,

even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be *ultra vires* on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual, In cases where such agreements are made the terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made". The Supreme Court, therefore, upheld the levy of the minimum guarantee charges on the basis of the agreement which had been entered into between the parties, which agreement was not regarded as being unreasonable,

34. From the aforesaid decisions, it will become clear that all the Courts have, unanimously, upheld the demand of minimum charges. While in some cases the demand has been upheld on the basis of the agreements entered into between the consumers and the licensees, some High Courts have, however, referred to the provisions of the proviso to Section 22 for justifying the levy of minimum charges. The Supreme Court in Bihar State Electricity Board's case JT 1989 (4) SC 421 (supra), while referring to decisions of some of the High Courts, based its decision solely on the terms of the agreement entered into between the consumer and the licensee. The clause of the agreement permitting the imposition of minimum charges was held to be not unreasonable and the Supreme Court did not give any opinion on the question whether the demand for minimum charges would, in that case, be governed by the provisions of proviso to Section 22. The Rajasthan High Court in DCM's case (supra) not only referred to proviso to Section 22 for according statutory justification for the levy of the deemed charges but relied upon the provisions of Clause VI of the Schedule to 1910 Act for holding that the demand charges could not exceed 15% of the cost of the service line required for making the supply to the consumer. This was because of the specific provision contained in the said Clause VI. We may, at this juncture, point out that by virtue of the proviso to Section 277 of the Delhi Municipal Corporation Act, 1957, Clause VI of the Schedule to the 1910 Act, relating to the duties and obligations of a licensee, does not apply. This being so, the decision of the Rajasthan High Court, based primarily on Clause VI of the Schedule to the 1910 Act, can be of no assistance

to the petitioners who are seeking to contend that the minimum demand charges cannot exceed 10% of the cost of installation and, therefore, there would be no occasion to increase the rate unless and until it can be shown that additional capital expenditure has been incurred by the respondents.

35. On a careful analysis of Section 22 of the 1970 Act, it is difficult for us to come to the conclusion that the power to realize minimum charges is governed only by the provisions of the proviso thereto. Sections 19A to 27 of the Electricity Act deal with the supply of electricity by the licensee. The said provisions, inter alia, contain the right, duties and obligations of the licensee. While Section 21(2) enables the licensee, subject to the conditions prescribed therein, to lay down conditions regulating his relations with intending consumers, Section 22 casts an obligation on the licensee to supply energy. A license is usually granted for "an area of supply". Under Section 2(b) "area of supply" has been defined to mean "the area within which alone a licensee is for the time being authorized by his license to supply energy". We understand this to mean the geographical area for which the licensee has been authorized to supply energy.

36. The substantive part of Section 22 makes it obligatory on the licensee to supply energy to every person in the area on the same terms as those on which any other person in the same area is entitled to receive. This provision gives a right to a consumer to receive energy from a licensee provided the consumer is within the area of supply of the licensee. Secondly, such a consumer cannot be discriminated against and he has a right to get the supply in similar circumstances as any other person in that area of supply. The proviso to Section 22 is not, in our opinion, an independent substantive provision. It is merely an exception to the substantive provision and this provides or indicates under what circumstances a licensee may charge extra for supplying electricity. Whereas the main provision gives every person, within an area of supply, a right to demand electricity, the proviso deals with such a person who has no right to demand electricity as of right. Such a person is one who wants electricity for any premises "having a separate supply" (emphasis added) and on such intending consumer agreeing to pay a minimum annual sum which may be demanded. To put it differently, the proviso is meant to cater to the needs of a consumer who already has a source of supply and wants, from a licensee, an additional or an extra or a separate supply of energy. This extra, separate or

additional supply cannot be demanded as of right or on the same terms and conditions as the normal supply which is made within the area of supply to other persons. Such a supply can be given if the consumer agrees to pay the minimum charges. The reason for this is simple. For normal supply no additional expenditure has to be incurred by the licensee and under Section 22, he is under an obligation to supply electricity within the area of supply. In a case falling under the proviso, however, licensee would be dealing with a consumer who already has a source of supply and is wanting an extra benefit. It is in order to give this extra benefit, of a separate source of supply, that the licensee may have to incur additional capital expenditure and also other standing charges and, therefore, the proviso enables the licensee to demand minimum charges while providing this separate supply. Emphasis, till now, has not been placed in India on the words ".....any premises having a separate supply.....". The use of the words clearly indicate that the proviso postulates that the consumer already has a separate supply of energy and what is he asking for is additional supply.

37. The objects and reasons, as per notes to clauses by which proviso to Section 22 was inserted, states that the same has been based on the Electric Lighting Act, 1909 of England. Section 15 of the English Act is similar to the proviso to Section 22. The said Section 15 is as follows:

"15. Notwithstanding anything in the Electric Lighting Acts or in any Act of Parliament or Provisional Order authorizing an undertaking, a person shall not be entitled to demand or to continue to receive from undertakers authorized to supply electricity in any area a supply of electricity for any premises having a separate supply, unless he has agreed with the undertakers to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure, and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises the sum to be so paid shall be determined in default of agreement by arbitration."

This section was amended by the Electricity (Supply) Act, 1922 of England and Section 23 of the said 1922 Act is as follows:

"A person shall not be entitled to demand or continue to receive for the purposes of a standby supply only from any authorized undertakers a supply of electricity for any premises having a separate supply of

electricity or a supply of gas, steam, or other form of energy unless he has agreed with the undertakers to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure incurred by them in providing such standby supply and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises. The sum to be so paid shall be determined in default of agreement by arbitration." The aforesaid provision has been explained in Halsbury's Laws of England, Volume 16, para 121 as follows":

"Standby supplies. A person is not entitled to demand or continue to receive, for the purposes of a standby supply only, from any electricity board a supply of electricity for any premises having a separate supply of electricity or a supply (in use or ready for use for the purposes for which the standby supply of electricity is required) of gas, steam or other form of energy unless he has agreed with the board to pay to it such minimum annual sum as will give it a reasonable return on its capital expenditure in providing such a standby supply and will cover other standing charges incurred by it in order to meet the possible maximum demand for those premises. In default of agreement the sum to be paid is to be determined by arbitration."

For the aforesaid passages, reference is made by Halsbury to the case of *Wm. M'Coard and Son v. Corpn. of Glasgow*,¹⁵. The plaintiff in that case, from 1909 to July, 1926, was running machines which were partly driven by steam and partly by direct current electricity (DC) provided by the Corporation. In 1926 they applied for supply of alternating current (AC) for the motors. The Corporation erected a transformer house and AC current was supplied to them in addition to DC electricity which was continued to be received. The question arose whether the AC supply which was being made could be regarded as a standby supply or not which would fall under the provisions of Section 23 of the 1922 Act which would enable the Corporation to demand minimum charges. Arbitration proceedings had commenced and action was brought to stop them. It was contended on behalf of the plaintiff that Section 23 cover only those cases where there is a supply of electricity of the same frequency and character so that in the event of a break down the standby supply can immediately be brought to use. In other words, the supply under Section 23 was to be such

which could not be used in addition to or at the same time when the normal supply was being used. Rejecting this contention, it was observed that "such a definition omits to notice that under Section 23 a supply may be standby if the premises requiring it have a separate supply of gas, steam, or other form of energy, clearly showing that there is no relation whatever between the standby supply of electricity and the private supply of the consumer.....I prefer the definition given by the arbiter in his note, which runs as follows:

"A standby supply of electricity is a supply of electrical energy which is available to take the place of another supply of energy for driving machinery, lighting, heating, or any other purpose, or to supplement such other supply of energy when the demand for energy is in excess of that which could be economically or conveniently provided by such other supply, and it remains a standby supply whether it is made use of or not."

Explaining the said provision further, it was observed that "Stated shortly, the section means that if a supply is standby its introduction can only be demanded, or a right to have it continued insisted on, if the consumer agrees to pay a standby rate. If he does not, the undertaker can refuse to introduce or continue the supply. If I am right in this interpretation, the Corporation mistook their remedy. They had the right to cut off the supply, but not to insist on a scale of pay which the consumers repudiate."

38. The aforesaid decision is clearly applicable to the law in India. The provisions of Section 15 of the 1909 Act and Section 23 of the 1922 Act of England are analogous and similar to the provisions of the proviso to Section 22. It is true that in the proviso to Section 22 the word "standby" is not mentioned but in Section 15 of the 1909 Act of England also the word "standby" did not exist. Nevertheless, the nature of the supply as envisaged by Section 15 of 1909 Act, which was repealed by Section 23 of the 1928 Act, is the same, namely it was standby electricity. The licensee is not under an obligation to provide standby electricity but if he does so, he is entitled to demand minimum charges. If this extra amount demanded is not paid, the remedy with the licensee is to discontinue the supply and seek arbitration with regard to the amount or the rate which would be payable.

39. In the present case, the petitioners have not obtained standby supply from

the respondents. It is a normal supply which has been given to the petitioners under Section 22. The petitioners did not have existing separate source of supply and, therefore, the energy which was supplied to the petitioners would not be covered by the provisions of proviso to Section 22.

40. Whereas it is obligatory on the licensee to supply electricity under Section 22 of the Electricity Act of 1910, whenever a person within the area of supply applies for it, the proviso to the said section does not make it obligatory on the licensee to supply electricity on demand. In other words, the substantive portion of S, 22 and the proviso to the said section cover two different areas. Whereas the main provision contained in Section 22 leaves no option with the licensee but to supply energy to a person within the area of supply, the proviso, however, makes it clear that the licensee will have an option not to supply energy in cases covered by the said proviso. This is clear from the use of the words provided that no person shall be entitled to demand from a licensee a supply of energy.....'. If there is no right with a consumer to demand energy, correspondingly, there would be no obligation on the licensee to supply energy. The demand and the supply of energy under the proviso to Section 22 is, therefore, contractual in nature and that is why the proviso provides that if there is a difference of opinion between the consumer and the licensee with regard to the minimum annual sum to be paid by the consumer, then that difference or dispute is to be settled by arbitration. The question of a dispute with regard to the amount to be charged for electricity supplied being decided by arbitration would only arise if the said supply is as a result of a contract and not by reason of an obligation cast on the licensee by the Act. Whereas there would be no question of a dispute being referred to arbitration with regard to the supply by a licensee to a consumer under the substantive portion of Section 22, where the consumer is within the area of supply, it is only where the consumer requires an extra or additional or standby supply under the proviso to Section 22 that the dispute can be referred to arbitration, if the licensee agree to give such a supply and, thereafter, a dispute arises with regard to the sum to be paid for the supply so made.

41. It is contended, on behalf of the petitioners, that the respondents have in fact not disputed that the minimum demand charges can be levied only in accordance with provisions of the proviso to Section 22 of the Act. In this connection, our attention has been drawn to the averments in the writ petition

where reference is made to Section 22 and to the proviso in particular and it has been stated that according to the proviso the amount which can be charged can only be a reasonable return on the capital expenditure incurred. In reply it has been stated by the respondents as follows:-

"It is denied that the minimum consumption guarantee has been fixed arbitrarily and de hors the capital expenditure and other standing charges incurred by the respondents in order to meet the possible maximum demand of the consumers."

42. The submission of the counsel for the petitioners is that the aforesaid averment amounts to the respondents admitting that the proviso to Section 22 applies. It was also sought to be suggested that even the Supreme Court in the case of *The Amalgamate Electricity Co. Ltd. v. The Jalgaon Borough Municipality*¹⁶ have observed that the minimum consumption charges can be realized in accordance with the provisions of the proviso to Section 22.

43. In the first instance, we do not find in the affidavit-in-reply any categorical admission by the respondents that minimum demand charges can only be levied under proviso to Section 22. In any case, even assuming that there is any such admission, an admission on a question of law cannot be binding on the respondents. Sri Sibal, the learned counsel for the respondents, emphatically contended that the minimum demand charges, in the present case, have not been levied under proviso to Section 22, as the said proviso, on a correct interpretation thereof, is not applicable. The case of the respondents is that the minimum demand charges have been levied in accordance with the terms of the agreement between the parties and the rates fixed by the Municipal Corporation under the relevant provisions of the Municipal Corporation Act.

44. In the *Amalgamate Electricity* case (supra) there was an agreement whereby electricity was supplied by the appellant, on a license, to the respondent. Clause 2 of that agreement provided for the supply of the electricity at a rate specified therein, while Clause 3 stated that the Municipal Committee shall take supply of electrical energy for a minimum period of 16 hours a day and the company shall supply electricity for a maximum period of 20 hours a day. It also provided that the company will charge the Municipality a minimum of 50 units. The question which arose was whether the company could charge the minimum as provided by the agreement. The Supreme Court observed that clause 3 of the

agreement "embodied what is known in common parlance as the doctrine of minimum guarantee i.e. the company was assured of a minimum consumption of electrical energy by the Municipality and for the payment of the same whether it was consumed or not". Reference was made to Section 22, by the Supreme Court, in the following manner:-

"Moreover clauses 2 and 3 of the agreement seem to us to be in consonance with the spirit and letter of the proviso to Section 22 of the Indian Electricity Act".

The reason for minimum guarantee charges was explained by the Supreme Court in following words:-

"Moreover it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the plaintiff had to keep everything ready so that power is supplied the moment the switch was put on.

In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses."

45. From the aforesaid decision it is clear that the levy of minimum guarantee charges was upheld by reason of the provisions in the agreement between the parties. Proviso to Section 22 was referred to merely as an illustration and it was observed that the agreement was in consonance of the spirit and letter of the said proviso. What is important to note is that the Supreme Court upheld the realization of the minimum guarantee charges on the ground that the licensee was obliged to keep the power ready for being supplied as and when required. As far as the licensee was concerned it had to ensure that the supply lines were fully charged and it depended on the wish of the consumer whether to consume the electrical energy or not. It may be noted that unlike water, which can be stored, the electrical energy when it is generated cannot be stored and if the consumer, who has got an electric connection, does not use the same then the said energy, which is generated is lost.

46. We also find merit in the contention of the learned Counsel for the respondents that even if it be assumed that the proviso to Section 22 applies, the respondents have levied the minimum demand charges would in accordance with the principles laid down therein. The said proviso enables the licensee to realize minimum annual sum not only covering a reasonable return on the capital expenditure, but also to cover other standing charges incurred by the licensee. The other standing charges would, in our opinion, cover loss of revenue on account of non-consumption of energy by the consumer just as the said charges would also include losses incurred on account of non-payment of tariff or theft of energy. In order to ensure that energy is available to a consumer, the licensee has to keep the energy supplied at all times even though the consumer may choose not to utilize the same throughout the period of supply. For instance, a consumer may use the maximum energy which is supplied for three hours, whereas the licensee has to keep in readiness the supply for 24 hours. The licensee incurs expenditure in generating and supplying the energy for 24 hours, whereas it gets revenue, if no minimum demand charges were fixed, only for the consumption of 3 hours. In order to provide an adequate return to the licensee for the supply made the licensee would be entitled to insist on its recovering the generating and supply costs of the electricity plus a reasonable profit. When the licensee is supplying electricity for 24 hours, but a consumer chooses to consume electricity only for three hours, the licensee would be incurring costs for ensuring supply of electricity for 24 hours. In such an event, the expenditure incurred for generating and supplying electricity for 24 hours would be covered by the expression 'standing charges' occurring in proviso to Section 22. The total costs of generation and supply are incurred by the licensee in order to meet the maximum demand for the whole period of supply of electricity, irrespective of the period during which the said supply has been used by the consumer.

47. We are also unable to agree with the contention of the learned Counsel for the petitioners that the impugned resolution shows non-application of mind by the respondents in fixing the minimum demand charges at Rs. 340/- per KVA per month. The submission of the learned Counsel for the petitioners was that the said resolution was invalid as it ignored the relevant and material factors like load shedding and low voltage while determining the increase in minimum compensation guarantee charges.

48. The reason for revision of the minimum consumption charges is contained in the letters dated 24th January, 1989 and 23rd March, 1989 written by the General Manager of respondent No. 2 to the Delhi Electricity Supply Company which letters have been referred to hereinabove. The reasons for the revision of the minimum consumption charges, in respect of arc/induction furnaces, were that in many instances it has been noticed that meters where bulk supply are made were found to be defective and the consumption recorded was found to be much less than in the previous years. Furthermore, compared to the connected load, the consumption was found to be extremely less causing loss of huge revenue to the undertaking. The arc/induction furnaces normally run continuously and, therefore, it will be justifiable if the rate of minimum consumption charges was increased. It was further noted that there were commercial losses which were attributable to pilferage/fraudulent abstraction of energy. The variation in the electricity consumed by different consumers, which would be referred to presently, would tend to indicate that the charge of pilferage of electricity and gross under utilization or consumption of electricity, compared to the sanctioned load, is not without foundation.

49. The respondents have placed on record a tabulated statement of the consumers using induction furnaces. The said statement shows large variation of the electricity consumed. On the assumption that the electricity consumed is as per the maximum demand as per sanctioned load the approximate number of hours for which the induction furnaces have been worked in a month has been stated in the said statement. A perusal of which shows large variation. The statement which has been filed relates to 52 consumers and is as follows:-

S.No	Name	Sanction load	Average consumption per month in units	Approximate No. of hours worked in a month
	2	3	4	5
1.	M/s. Complex	712 KW	101218	142.1

	Steel Pvt. Ltd.								
2.	M/s. Steel Ball Bearing	1209 KW	389440	322.1					
3.	M/s. Stretchlon Pvt. Ltd.	1502 KW	68468	42.3					
4.	M/s. K. S. Forge Metal Pvt. Ltd.	1773.1 KW	100859	56.8 TR>	5.	M/s. Sonal Udyog	2174.8 KW	329530	151.5
6.	M/s. Shagun Steel	1542.3 KW	85577	55.4					
7.	M/s. Dugger Fibre Pvt. Ltd.	1008 KW	88819	88.1					
8.	M/s. Bansal Metal	2820 KW	122944	43.6					
9.	M/s. Samman Steel Rolling Mill	845.52 KW	64531	76.4					
10.	M/s Shiv Alloys Pvt. Ltd.	1670 KW	149769	89.6					
11.	M/s. Subh Metal	1549.22 KW	137136	52.9					

12.	M/s. Goenka Alloys Steels	1369.13 6	154020	112.4
13.	M/s. Ashok Soap Factory	534.20 KW	19504	36.5
14.	M/s. Atul Traders	681.4 KW	63756	93.5
15.	Sh. Gulab Rai	365.47 KW	179933	492.3
16.	M/s. Saraf Steel Pvt. Ltd.	345 KW	45472	131.8
17.	M/s. Wootz Steel Pvt. Ltd.	1382.5 KW	143604	103.8
18.	M/s. Superiors Steel	601.92 KW	105244	174.8
19.	M/s. Batra Steels	720.297 KW	239203	332.1
20.	M/s. Hari Steel	2089.78 KW	238135	113.1
21.	M/s. Alliance Paints and Varnish	1862.31 8 KW	265214	142.4.

	Works			
22.	M/s. Alankar Metal Pvt. Ltd.	657.75 KW	116605	177.2
23.	M/s. Mittal Casting	2013 KW	83330	041.3
24.	M/s. Singla Trading and Leasing Co. Ltd.	1275.02 KW	123670	096.9
25.	M/s. Maheshwar Ferro Alloys	750 KW	88510	118.0
26.	M/s. Inderprastha Chemical Works	1573.11 KW	167085	106.2
27.	M/s. Plaza Steel and Alloys Ltd.	1403.75 KW	355716	253.4
28.	M/s. Ceegee Steels and Forging Pvt.Ltd.	1498.45 KW	219247	146.3
29.	A. K.Virmani	405.142 KW	43215	106.6
30.	M/s. Sahu	758 KW	339695	448.1

	Refrigeratio n			
31.	M/s. Ambeecee Consolidate d Steel	1889 KW	414290	220.3
32.	M/s. D. P. Processor (P.) Ltd.	453 KW	218264	481.8
33.	M/s. GD Ferro Alloys (P.) Ltd	1141 KW	259519	227.4
34.	M/s. Bhawani Casting P. Ltd.	509.82 KW	89592	175.7
35.	M/s. Automotive Enterprises	860.44 KW	151736	176.4
36.	M/s. Sagar International	699.98 KW	63901	091.2
37.	M/s. Unique Alloys Pvt. Ltd.	770 KW	146482	190.2
38.	M/s. Arihant Steel	566.17 KW	60531	106.9
39.	M/s	1717.65	81490	047.4

	Lamba Steel Alloys	KW		
40.	M/s. Allied Holdings	1819.35 KW	281668	154.8
41.	M/s. Rajdeep Ind.	814.51 KW	95285	116.9
42.	M/s. Surinder Alloys	1661.20 KW	184061	110.0
43.	M/s. Matasya Metal Udog	1410 KW	111907	073.9
44.	M/s. Metal Forging	2549 KW	73995	29
45.	M/s. Bharat Ispat	570.1 KW	228269	400.4
46.	M/s. Kathuria and Sons	1726.34 KW	253500	146.8
47.	M/s. National Steel	564.5 KW	125526	222.3
48.	M/s. Norma Industries	1295 KW	233368	180.2
49.	M/s. Kwality	1416.53 KW	259493	183.1

	Steel			
50.	M/s. Chetan Swaroop Vinod	457.6 KW	8260	018.1
51.	M/s. Amrit India Ltd.	1515 KW	202500	133.6
52.	M/s. Allesco Steel	542.28 KW	43726	080.6

50. The aforesaid statement is most revealing. The variation ranges from the case of M/s. Chetan Swaroop Vinod from 18.1 hours per month to the case of Shri Gulab Rai, whose consumption is 492.3 hours per month. We are informed by the learned Counsel for the respondents that the minimum consumption charges would not be payable if a consumer utilizes or consumes 60% of the sanctioned load. The rate per unit has not been changed. It is only the minimum guarantee charges which have been revised. If a consumer uses more than 60% of the sanctioned load, then he is not adversely affected by the revision of the minimum demand charges from Rs. 40/- per KVA per month to Rs. 340/- per KVA per month. It is difficult to appreciate or understand how the manufacturers using induction furnaces can have such variation in the consumption of electricity, as indicated by the tabulated statement hereinabove, except to lend credence to the suggestion of the respondents, namely, that there has been a large scale pilferage of electricity. It is not easy to accept that induction furnaces having sanctioned loads of more than 1000 KW consuming electricity, if converted into approximate number of hours worked in a month at the maximum load, being as little as 18.1 hours especially when there are instances of other induction furnaces consuming far more number of units per month. The respondents had to keep in readiness supply of energy as per the sanctioned load of the various consumers. The respondents were incurring expenditure for the generation and supply of the same. When the consumers were not, at least officially, using the said load and paying for it, the respondents obviously had no option but to revise the minimum demand charges so as to cover up and make good the generating and supply costs. It has

been suggested by the counsel for the respondents that it is the conduct of the consumers, like the petitioners, who are being accused of theft of electricity which has resulted in the respondents having to enhance the minimum demand charges.

51. Before parting we cannot help but to notice that if the allegation of the respondents in this behalf is correct, then surely some of the staff of the respondents must also be involved in such pilferage of electricity. It is difficult for us to believe that for a long period of time pilferage of electricity takes place without the inspecting staff of the licensee not knowing about the same. Any responsible organization would, under these circumstances, take appropriate action against the delinquent staff. We have no reason to believe that the respondents will not do so.

52. It was then contended that the raising of the minimum demand charges only in the case of consumers who have arc/induction furnaces is violative of Article 14 of the Constitution. It is submitted that one of the categories to whom electricity is supplied is LIP industries. It is not as if in respect of all the industries falling in this category that the minimum demand charges have been increased. The submission is that singling arc/induction furnaces out of this category and giving a harsher treatment is discriminatory.

53. It is no doubt true that in respect of arc/induction furnaces the minimum demand charges are more than in respect of other industries falling under LIP category. The question, however, is whether can this be done.

54. According to the respondents amongst the various LIP industries the arc/induction furnaces industry is such whose one of the main raw materials is electricity. These industries are a class apart. and by providing that they will pay higher minimum demand charges the provisions of Article 14 of the Constitution have not been violated. The submission is that these industries require high sanctioned load and because of the same, the respondents have to keep in readiness the supply of electricity as per the sanctioned load. It was contended by the respondents that in the letter dated 8th March, 1989 the All India Induction Furnaces Association had written to the General Manager, DESU to the effect that industries like induction melting furnace units, by virtue of their technology have to be run on continuous basis for 24 hours a day and cannot be run intermittently without jeopardizing the process adversely.

55. According to Sri Sibal, learned Counsel for the respondents, if an industry consumes only 60% of the load sanctioned, then it will not have to pay the minimum demand charges and the rate per unit payable is the same in respect of all LIP industries. According to the learned Counsel, if any industry works for 25 days in a month for 24 hours a day, then on 60% of the load factor, for every 1 KW of electricity used, the industry would have consumed 360 units per month. At the rate of Rs. 1.10 per unit it will have to pay Rs. 396 per month. The minimum demand charge is only Rs. 340/- per month. Therefore, it is contended that the levy of minimum demand charge is not all that onerous and it is permissible to the respondents to have higher demand charges or different rates in respect of different types of industries.

56. The question whether there was any undue preference or discrimination by levying higher charges in respect of one category of consumers vis-a-vis others came up for consideration before the Court of Appeal in the case of *London Electricity Board v. Springate* ¹⁷ The London Electricity Board's tariff offered two alternative methods of payment to its customers. One was a flat rate tariff levying a regular charge per unit used and the other was a two-part rate tariff levying a standing charge of a fixed amount each quarter and charging consumption above a certain figure at so much per unit, similar to the charge in question in this case. The standing charge was higher for larger houses than for smaller ones. It was contended by an occupier of a large house that lower standing charges in respect of smaller houses constituted an undue discrimination against occupier of larger houses. The Board, however, contended that there was no undue discrimination on the following grounds :-

- (i) Bigger potential consumption in larger houses necessitated the provision of more equipment and apparatus and so a great demand on capital;
- (ii) Bigger electrical apparatus in larger houses involve greater maintenance; and
- (iii) The Bigger equipment involve greater expenditure by the Board.

The Court of Appeal came to the conclusion that the higher standing charges for bigger houses was valid having regard to the circumstances and there was no undue discrimination against the occupiers of larger houses.

57. The Punjab and Haryana High Court also had to consider a similar argument in the case of *Kartar Singh v. Punjab State Electricity Board*,¹⁸ In that case the Board had originally fixed the tariff whereby the charges would be at the rate of Rs. 1 per horse power and also on the actual consumption of electricity. Under the new tariff the tube-well owners alone were required to pay on one flat rate. It was held that the tube-well owners were a category in themselves and the other categories of consumers were not similarly situated and, therefore, there was nothing unreasonable in classifying the tube-well owners as a separate category and fixing a separate tariff rate for them.

58. Applying the analogy of the aforesaid decision, to the present case, it is clear that the arc and induction furnace consumers can be regarded as a separate category by themselves and fixing a higher demand charges cannot be considered as illegal.

59. Our attention was also drawn to the case of *Northern India Iron and Steel Co. Ltd. v. State of Haryana*,¹⁹. That case was also of consumers, who had arc furnaces. The State of Haryana provided that in respect of consumers having arc furnaces payment will have to be made at the rate of Rs. 12/- Per KVA whereas the other large supply consumers had to pay at the rate of Rs. 10/- per KVA as demand charges. The contention raised in that case was that there was no reason for charging Rs. 12/- per KVA from a consumer having an arc furnace. Dealing with this contention the Punjab and Haryana High Court observed as follows:-

"It is also contended that there is no rational basis for discriminating between a large supply consumer and an arc furnace consumer and, therefore, the clause regarding rates being discriminatory, is liable to be struck down. The Board in its affidavit has stated that the steel furnace is a heavy type industry and it has to install a much higher capacity of equipment for that industry as compared to other large supply industrial consumers. It further says that the steel furnaces constitute a separate category and the charges are based on rational differentia. The averments in the affidavit filed on behalf of the respondents have not been controverted by the petitioners. It is an admitted fact that consumption in electric furnaces is very high. In order to meet that demand the Board has to fix very heavy installations at great cost. The owners of the steel furnaces thus create a class in themselves. It has not been alleged that the Board fixed different tariffs for the steel furnaces owners inter se. The

learned Counsel for the petitioner has failed to show that the classification is unreasonable. In the abovesaid circumstances, the classification of furnace owners is reasonable and is not hit by Article 14 of the Constitution of India."

60. Another contention which was raised in this case before the Punjab and Haryana High Court was that the State could not charge electricity duty on demand charges during power shortage period. This contention of the petitioner was also repelled.

61. An appeal was filed against the aforesaid decision for the Punjab and Haryana High Court to the Supreme Court. The Supreme Court in the case of *Northern India Iron and Steel Co. Ltd. v. State of Haryana*,²⁰ only partially reversed the aforesaid decision of the Punjab and Haryana High Court. It held that the inability of the Board to supply electric energy due to power cut or any other circumstances beyond its control as per the demand of the consumer according to the contract will be reflected in and construed as a circumstance beyond the control of the consumer, which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The minimum demand charge for a particular month will have to be assessed in accordance with sub-clause (b) of clause 4 of the tariff as framed under Section 49 and the Supreme Court ordered that there will be a proportionate reduction in respect thereof. It will be seen that the decision of the Punjab and Haryana High Court on the other points was not disturbed.

62. Following the aforesaid decision we are- clearly of the view that increasing the minimum demand charges in respect of arc and induction furnaces is not violative of Article 14 of the Constitution.

63. Sri Madan Bhatia, counsel for the petitioners had sought to rely upon the decision of the Supreme Court in the case of *Indian Metal and Ferro Alloys Ltd. v. State of Orissa*²¹ in support of his contention that treating industries differently would amount to arbitrariness, discrimination and violation of Article 14 of the Constitution.

64. The aforesaid decision is clearly distinguishable and has no application to the present case. In that case it was held that a power intensive unit which had not been extended any advantage in the nature of allocation of additional power on the ground that it is 100 export oriented industry must be treated on the same

footing as the other power intensive industries, called domestic industries, and so long as the benefit of clubbing is allowed to domestic power intensive units, such benefit could not be denied to an export oriented unit which had not been allocated any power on the basis of its export performance. The implication clearly was that both types of industries fell in the same category, but if additional power had been allocated on the basis of export performance then, clearly, different treatment could have been meted out. In the present case, the arc and induction furnace industries are a class apart and the fixing of higher minimum demand charges cannot be regarded as being discriminatory.

65. It was also submitted that the provisions of Section 23(1) (3) of the Indian Electricity Act, 1910 have been violated in the present case. With regard to Section 23(1) the submission was that the said provision provides that a licensee will not show undue preference to any person in making any agreement for supply of the energy. It is contended that by charging of the higher demand charges from the petitioners undue preference has been shown to other person. Such a contention, as we have already noted, was raised before the Court of Appeal in the case of London Electricity Board (1969) 3 All England Reporter 289 (supra) wherein the Court of Appeal held that, for the reasons stated therein, realization of higher standing charges for large houses did not amount to undue discrimination against the occupiers of the said houses. Undue preference is shown if parties are similarly situated. Where, however, in a case like the present, the arc and induction furnace industry is a class apart and higher demand charges are being realized from them for the reasons stated in the letters dated 24th January, 1989 and 23rd March, 1989 of respondent No. 2 we are unable to come to the conclusion that undue preference has been shown to the other consumers of electricity. In any case Section 23(1) provides that no undue preference will be shown to any person "in making any agreement for supply of energy". It has not been brought to our notice that there is any difference in the agreement which has been entered into by the respondents with different consumers for the supply of energy. The wordings of the agreement being the same merely because the rates of minimum charges are altered with regard to a particular class of consumers would not result in a violation of Section 23(1) of the Act. Section 23(1) may have been attracted where, in cases of persons similarly situated, more favorable terms of agreement had been provided to any person as opposed to another. To put it differently Section 23(1) contemplates a case where undue preference to a person is as a

result of the making of any agreement for the supply of energy. Such is not the case here and, therefore, Section 23(1) has not been violated.

66. Referring to Section 23(3) of the Indian Electricity Act, 1910 it was submitted that there is no provision which could enable the respondents to realize minimum demand charges. The Section 23(3) reads as follows:-

"(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer-

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by the State Government."

The said section provides for charges of electricity. Whereas sub-section (1) prohibits showing of undue preference in making of any agreement for supply of energy, sub-section (3) is concerned with the charges as such. Under the said sub-section a licensee may charge for the energy supplied by any of the three methods mentioned in sub-clauses (a), (b) and (c) of sub-section (3), but these provisions will apply only "in the absence of an agreement to the contrary", as provided by the opening sentence of sub-section (3) of Section 23. The use of the aforesaid words clearly show that if there is an agreement to the contrary, then the charges can be realized by the licensee in terms of the agreement. It is only if there is no agreement between the licensee and the consumer that the licensee is entitled to charge for the energy supplied according to sub-clauses (a) or (b) or (c) of sub-section (3). The contention of the learned Counsel for the petitioners that there has been a change in the method of charging without the approval of the State Government thereby violating the provisions of Section 23(3)(c) does not arise. In view of the fact that there is a subsisting agreement between the petitioners and the respondents pertaining to the charges on supply of energy, sub-clauses (a), (b) and (c) of sub-section 23(3) do not apply. Moreover, there has been no change in the method of charge. The word 'method' cannot be equated with the rate or tariff. The method for charge has not been altered. The method being the two-part tariff which has been in force from the beginning. Any alteration in the rate or charges does not amount

to an alteration in the method of charge for energy. It was submitted by the learned Counsel for the respondents that, apart from the agreement between the parties, the minimum demand charges can be realized under sub-clause (a) or (b) of Section 23(3). We need not, however, go into this question because it is clear that the agreement between the parties itself postulates the payment of charges in the manner prescribed in clause 15(a) and (b) of the agreement. Reading the said clauses along with the rate schedule it is clear that the petitioners had agreed to pay minimum demand charges at such rate as may be levied, from time to time.

67. It was then contended by Shri Madan Bhatia that the Municipal Corporation Act was enacted in 1957 and at that time Clause XI-A of the Schedule to 1910 Act was on the Statute book. It was submitted that under Section 277 of the Delhi Municipal Corporation Act the Corporation has all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and the said Clause XI-A stood incorporated in the DMC Act and the subsequent repeal of the said Clause in 1959 would not make it inapplicable. As a consequence thereof, it was contended, the said Clause XI-A does not contemplate levy of charge for maximum energy notionally deemed to be consumed in a month. Furthermore, the Central Government, it was submitted, has not given power to the respondents under Clause XI-A to levy minimum charges. It was also submitted that if Section 283 of the DMC Act was construed to include the power to levy minimum charges, whether the electricity was supplied or not, it would be inconsistent with Clause XI-A.

68. The said clause XI-A of the Schedule to Indian Electricity Act, 1910, prior to its repeal in 1959 read as under:-

"A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made".

69. At this juncture it will also be relevant to refer to Sections 277 and 283 of the Delhi Municipal Corporation Act, which read as follows:-

"277. Subject to the provisions of this 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 Indian Electricity Act, 1910, and this Chapter shall be deemed to be the license of the Corporation for the purposes of that Act:

Provided that nothing in Sections 3 to 11 of, or in clauses I to IX of the Schedule to, that Act relating to the duties and obligations of a licensee shall apply to the Corporation."

"283. Subject to the provisions of any law for the time being in force, charges shall be livable for the supply of electricity by the Corporation at such rates as may, from time to time, be fixed by the Delhi Electric Supply Committee with the approval of the Corporation."

70. According to Section 277 the Chapter XIII of the DMC Act is deemed to be the license of the Corporation for the purposes of the Indian Electricity Act, 1910. If this be so, then the power to fix the rates for supply of electricity is contained in Section 283 which occurs in the same chapter. Assuming that clause XI-A applied, the said clause provides that a licensee may charge a consumer a minimum charge for supply of energy of such amount and determined in such manner as may be specified by his licence. The license, namely, Chapter XIII of the DMC Act contains Section 283 which gives the power to the Corporation to levy charges for supply of electricity. The license, as per clause XI-A, is only to provide for the amount of charge and the manner in which the minimum charge is to be determined. The power to levy minimum charge is contained in clause XI-A itself. As is evident from the opening words, "A licensee may charge a consumer a minimum charge for energy.....".

71. Be that as it may, it is difficult for us to agree with the learned Counsel for the petitioners that with the repeal of clause XI-A the same still continues to apply to the Corporation. Section 277 confers on the Corporation "All the powers and obligations of a licensee under the Indian Electricity Act, 1910". The provisions of the Indian Electricity Act are not incorporated in the DMC Act. The Corporation, by virtue of Section 277, can exercise all those powers and obligations which any licensee would have under the Indian Electricity Act at any point of time. After 1959 a person to whom a license had been granted under the Indian Electricity Act would not be covered by the provisions of the said clause XI-A of the Schedule. If the repealed provision cannot apply to a licensee under the Indian Electricity Act, it would mean that the licensee does

not have the powers and the obligations, whatever they be, under the said Clause XI-A. If a licensee does not have to be governed by clause XI-A, then the Corporation also, which has the same powers as that of a licensee under the Indian Electricity Act, cannot also be regarded as being covered by the provisions of Clause XI-A. To put it differently, it cannot be that to the Corporation the provisions of clause XI-A would continue to apply, even after the repeal of the said clause, but any other licensee under the Indian Electricity Act, 1910 would not be governed by the provisions of the said clause XI-A. If the contention of Sri Madan Bhatia, counsel for the petitioners, is accepted, then the effect would be that the Corporation, which is also to be regarded as a licensee under the Indian Electricity Act, will be treated differently than any other licensee under the Act. Such a construction would be clearly violative of Article 14 of the Constitution.

72. In our opinion, therefore, Clause XI-A of the Schedule to the Indian Electricity Act would cease to apply after its appeal in 1959. Nevertheless, the Corporation would have power to levy the minimum demand charges by virtue of the agreement which had been entered into between the petitioners and the Corporation, and the petitioners will have to pay the charges at such rates as may be fixed by the respondents under Section 283 of the DMC Act.

73. It was also contended that the impugned enhancement was *ultra vires* Clause X(2) of the Schedule to the Indian Electricity Act, 1910. The said sub-clause reads as follows:-

"(2) Before commencing to supply energy through any distributing main, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge energy so supplied; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the State Government, to the State Electricity Board and the local authority (if any) concerned and to the Electrical Inspector and to every consumer of energy who is supplied by him from such distributing main."

74. It was submitted that the respondents were not entitled to change the method of charging without the prior mandatory notice to the Central Government and the petitioners. In our opinion, by increasing the minimum demand charges the

provisions of Clause X(2) have not been contravened. All that Clause X(2) provides is that once a method of charging has been fixed, then the method of charging will not be altered without following the procedure prescribed therein. As we have already observed, the method of charging remains the same, namely, the two-fold tariff system. Varying the rate or increasing the demand charges does not change the method of charging. A submission was also made before us to the effect that the manner and the extent to which the minimum guarantee charges can be determined or fixed are provided in Clause VI to the Schedule to the Act of 1910, which lays down the minimum/upper limit being only sum of 15% of the capital expenditure incurred by the licensee in laying down the mains, pipe-line, service lines and other equipment for the purposes of giving separate supply to the premises of the consumers in order to meet the possible maximum demand of the consumer. In our opinion, there is no merit in this contention. Proviso to Section 277 of the DMC Act clearly provides that clauses I to IX of the Schedule to the Indian Electricity Act, 1910 relating to the duties and obligations of a licensee shall not apply to the Corporation. It is submitted by the learned Counsel before us that Clause VI of the Schedule does not lay down any duties and obligations on the licensee. This submission is difficult to accept. The said clause *inter alia* provides for a request being made for the supply of electricity and requires a licensee to provide the electricity if the consumer complies with the requirements of the said clause. The provision with regard to the supply of electricity and the maximum rates which can be charged relate to the obligations of a licensee and, as such, by virtue of the provisions of proviso to Section 277 of the DMC Act, the said Clause VI can have no application.

75. It was also sought to be contended that clause 23 of the agreement entered into between the parties stipulates that the agreement shall be read and construed as subject to any of the provisions of the Indian Electricity (Supply) Act, 1948 and therefore, there has been a contravention of Section 49(4) of the Supply Act of 1948. There is no merit in this contention. Section 286 of the DMC Act *inter alia* provides for the dissolution of the Delhi State Electricity Board, with effect from the date of the establishment of the Corporation under the Act. Sub-section (2) of Section 286 further states that on the dissolution of the Board the provisions of the Indian Electricity (Supply) Act, 1948 relating to State Electricity Boards shall cease to have effect in the Union Territory of Delhi. Section 49 of the Indian Electricity (Supply) Act, 1948 contains

provisions for the sale of electricity by the Board to the persons other than the licensees. It is clear, therefore, that by virtue of Section 286(2) of the DMC Act, Section 49 of the Indian Electricity (Supply) Act, 1948 is not applicable inasmuch as the said Section 49 deals with the powers of the Board, regarding sale of electricity. With the dissolution of the Board, on the promulgation of the Delhi Municipal Corporation Act, Section 49 of the Supply Act has no application.

76. It was then contended that Section 283 of the Delhi Municipal Corporation Act is *ultra vires* and void as it confers arbitrary, unguided, unfettered, uncontrolled, unanalyzed powers on the Corporation to fix any rates for the supply of electricity. The submission is that there are no norms or guidelines provided for the fixation of electricity charges and therefore, Section 283 of the DMC Act suffers from the vice of excessive delegation and is *ultra vires*. We are unable to agree with this submission. The Legislature has, by enacting Section 283, empowered the Delhi Electricity Supply Committee to fix the rates for the charges of supply of electricity which is to become effective only with the approval of the Corporation. It is difficult for us to accept that the Section 283 suffers from any vice of excessive delegation. It has not been shown that the power under Section 283 has been exercised arbitrarily or contrary to law. The Corporation is a duly elected body and is expected to act reasonably and in the public interest. Bestowing discretionary power on such a body regarding the rate to be charged, for the supply of electricity cannot be regarded as being *ultra vires* or void.

77. Even though Section 283 does not contain or provide for the maximum rate which may be charged for supply of electricity, nevertheless, the Corporation will be guided by the principles on which electricity charges are determined. Notwithstanding the fact that the Supply Act, 1948 does not apply, by virtue of the provisions of Section 286 of the DMC Act, nevertheless, there is nothing to prevent the Corporation to keep in mind or invoke the principles or factors contained in Section 49 of the Supply Act, 1948 while fixing tariffs. The Corporation may not be entitled to fix rates for supply of electricity which are confiscatory in nature. When challenged it will, possibly, have to justify or explain the basis adopted by it for fixing the rate. Minimum demand charges is something which is known and the levy of the same has been upheld by different Courts for decades. Similarly different tariffs have been laid down

having regard to the geographical position of any area, nature of the supply and the purpose for which the supply is required and other relevant factors. Statutory recognition to this has been granted by Section 49(3) of the Supply Act, 1948. If, therefore, the Corporation follows the principles incorporated in such statutes, it cannot be said that it acts arbitrarily and vesting of the discretionary power with the Corporation with regard to the rate to be charged for supply of energy cannot be regarded as bestowing upon it arbitrary power. Section 283 does not suffer from the vice of excessive delegation.

78. Sri V.P. Singh, on behalf of some of the petitioners, had urged an additional contention to the effect that tariff cannot be fixed keeping in view the use of the end product. In other words, there was no authority to fix tariff by referring to the end product. We are unable to agree with this submission. As already noticed, in London Electricity Board's case, (1969) 3 All England Reporter 289 (supra), higher tariff was fixed keeping in view who the consumers were going to be, namely, larger houses. Similarly, the arc furnaces had to pay higher rate which was levied, which levy was upheld by the Punjab and Haryana High Court in the case of Northern India Iron and Steel Co. (supra). The same High Court had earlier in Kartar Singh's case, ILR (1971) 1 Punj 285 (supra), had upheld higher levy with relation to the use of electricity, namely, use by tubewell owners. Furthermore, even Section 49(3) itself enables a Board to fix different tariff depending upon "the purpose for which supply is required". In our view, therefore, separate and different tariff could be fixed keeping in view the end product because the end product or use required consumption of high amount of electricity. It was also contended by Sri Singh that by a judgment of a single Judge of this Court in ²² *Delhi Cloth and General Mills v. Municipal Corporation of Delhi dated 23rd May, 1984* it had been held that the power under Section 283 was statutory and was analogous to Section 49(1) and (2) of the Supply Act of 1948. It was contended that, therefore, there was no power under Section 283 to fix the minimum demand charges, which power may have been exercisable under Section 49(3) of the Supply Act. In Delhi Cloth and General Mills Case (supra) there was a clause in the agreement, identical to the one in the present case, which required the consumer to pay for electrical energy such amount as was to be calculated and ascertained in accordance with the rate schedule. It was also stated in the agreement that the consumer was liable to pay at the increased rates which may be levied by the Undertaking from time to time. It was held by this Court that the power to fix rates was

conferred not by the agreement, but by Section 283 of the Act. In other words, the implication was that clause 15 of the agreement and, Section 283 have to be read together. Section 283 gave the power to the Corporation to fix the rate and Clause 15 of the agreement made it obligatory on the consumer to pay for electric energy at the rates so fixed by the Corporation. It is no doubt true that in Delhi Cloth and General Mills case (supra) there are observations to the effect that the Corporation Act does not have a provision similar to Section 49(3) of the Supply Act, and that under the DMC Act different tariffs could not be fixed. We, however, find that Section 283 of the DMC Act did not in any way prevent or inhibit the Delhi Municipal Corporation from prescribing different tariffs for different types of consumers. In fact, it is an admitted case of the parties that there are different tariffs for domestic consumers, small industries and large industries. The principles enshrined in Section 49 of the Supply Act can be invoked by the Corporation while determining rates for supply of electricity. Furthermore, Section 23(3) of the Indian Electricity Act, 1910 contemplates agreement being entered into between the parties pertaining to charges for energy supplied to the consumer. The consumer would be bound to pay for energy by virtue of the agreement entered into by it with the Corporation.

79. It was also submitted that the principles of natural justice have been violated because no opportunity of hearing was granted prior to the passing of the impugned resolution whereby the minimum consumption guarantee have been increased. We find no merit in this contention. In Clause 15 of the agreement it has been agreed between the parties that the consumer will pay at the rates specified by the respondents from time to time. No opportunity of hearing being granted is contemplated by the said agreement. Furthermore, as held by the Supreme Court in *Sunderdas Kanhaiyalal Bateja*, (1989) 3 SCC 396, in the absence of express statutory provision for compliance with principles of, natural justice, those principles are not attracted to a decision taken by the legislative process. The question which arose in that case was the issuance of the notification by the State Government under the Bombay Provincial Municipal Corporation Act, 1949 proposing to form a Municipal Corporation by merging different municipal areas. It was submitted that before the notification was issued principles of natural justice should have been complied with. Rejecting this submission it was observed that while exercising such a power the Government was not subject to the rules of natural justice. As we have already observed, the rates are fixed and the charges are levied or varied by the

Corporation under Section 283 of the DMC Act, read with clause 15 of the agreement. The principles of natural justice are not incorporated in Section 283 of the DMC Act, as in fixing or varying the rates of charges the Corporation exercises its statutory power. In any case, as already noted, by virtue of the provisions of clause 15 of the agreement, the consumer has agreed to pay for electricity at such rates as may be determined by the respondents from time to time.

80. From the aforesaid discussions it follows that the enhancement of minimum demand charges from Rs. 40/- per KVA to Rs. 340/- per KVA is not illegal or invalid. Proviso to Section 22 of the Indian Electricity Act, 1910 and clause XI-A of the Schedule to the said Act are not applicable. The Corporation by virtue of the provisions of clause 15 of the agreement read with Section 283 of the DMC Act fixes different rates, from time to time, and the consumer is bound by the rates so fixed. Furthermore, the increase in the levy of demand charges does not require the previous sanction of the Government as the provisions of Section 21(2) are not attracted where there is merely a variation in the rate as there is no amendment to the conditions of supply. Principles of natural justice are not attracted to the present case and the impugned resolution does not suffer from any infirmity.

81. For the aforesaid reasons, these writ petitions are dismissed with costs.

Petitions dismissed.

Cases Referred.

1. AIR 1966 Supreme Court 353.
2. AIR 1936 Calcutta 265.
3. AIR 1939 Peshawar 8,
4. AIR 1953 Punjab 166,
5. AIR 1955 Punjab 133,
6. AIR 1955 Bombay 182.
7. AIR 1966 Bombay 160,
8. (1969) 1 Mad LJ 69.

9. AIR 1974 Allahabad 70
- 10., (1975) 16 Guj LR 90
11. ILR (1976) 1 Ker 435
12. AIR 1980 Bombay 154.
13. AIR 1988 Rajasthan 64
14. JT 1989 (4) SC 421.
15. 1935, Scots LT 117
- 16., AIR 1975 Supreme Court 2235
17. (1969) 3 All England Reporter 289.
18. ILR (1971) 1 Punj 255.
19. AIR 1976 Punjab and Haryana 59
20. AIR 1976 Supreme Court 1100
21. AIR 1987 Supreme Court 1727
22. Suit No. 518-A of 1983