

RAJASTHAN HIGH COURT

Man Industrial Corporation

Vs.

R.S.E.B.

S.B.C.W.P. No. 140 of 1982 and 67 other writ petitions
(S.C. Agrawal, J.)

04.09.1985

ORDER

S.C. Agrawal, J.

1. This writ petition and other writ petitions, a list of which is annexed as Schedule 'A' to this order, which are being disposed of by this order, raise a common question as to whether the petitioners are entitled to proportionate reduction in the minimum charges payable by them for the electric energy supplied to them in the event of curtailment of the supply of the electric energy to them on account of imposition of the power cut.

2. The Rajasthan State Electricity Board (hereinafter referred to as 'the Electricity Board') has been constituted under the provisions of the Electricity (Supply) Act, 1948 (hereinafter referred to as 'the Electricity (Supply) Act'. The Electricity Board undertakes the generation and supply of electricity to the various consumers in Rajasthan and in the exercise of its powers, it is governed by the provisions of the Electricity (Supply) Act. Under 26 of the Electricity (Supply) Act, the Electricity Board, in respect of the whole State has all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (hereinafter referred to as 'the Electricity Act') and the Electricity (Supply) Act and is to be deemed to be the licensee of the Board for the purposes of the Electricity Act. In exercise of the powers conferred by Section 49 of the Electricity (Supply) Act, the Electricity Board fixes the tariff for supply of electricity from time to time. The said tariff may either be single part tariff or a two part tariff. In a single part tariff the consumer has to pay for the electricity consumed by him during the billing period at the prescribed rates subject to the condition that he is liable to pay the minimum charges for the prescribed quantity of electricity irrespective of the fact whether he consumes it or not. The two part tariff consists of a

demand charge which is fixed and an energy charge which varies with the quantity of electricity consumed during the billing period. In the two part tariff the demand charges constitute the minimum charges because the same are payable irrespective of the fact whether electricity is consumed or not. Since March 1982 the Electricity Board has abolished the two part tariff for large industrial consumers and all the High Tension consumers of electricity are being charged on the basis of a single part tariff. For the purposes of supply of electricity to the consumer, the Electricity Board enters into an agreement. In the said agreement the provision is made for the supply of maximum demand by the Electricity Board to the consumer. The said agreement also incorporates the tariff for the supply of electricity to the consumer and in the said tariff provision is made for payment of minimum charges for the prescribed number of units by the consumer.

3. The petitioners in these writ petitions have industrial undertakings in the State of Rajasthan and for the purpose of those undertakings, they obtain electric supply from the Electricity Board and they have entered into agreements with the Electricity Board. In the agreement that has been entered by each of the petitioners with the Electricity Board, the maximum demand of electricity to be supplied to the consumer is prescribed and in Part II of the agreement the High Tension Tariff has been laid down which provides for the rate of charges as well as the minimum charges. As regards the minimum charges the said agreements provide as under : --

"Minimum Charges :

- i) For consumers having a contract demand above 115 KVA and up to 1000 KVA 110 units per KVA per month of the contract demand.
- ii) For consumers having a contract demand above 1000 KVA 130 units per KVA per month of the contract demand."

"17(a) If at any time the supplier is prevented from supplying electrical energy under this agreement in whole owing to all or any of the causes mentioned in Clause 10 of this agreement then the minimum charges payable by the consumer shall be reduced proportionately.

(b) If in the opinion of the Chief Engineer of the Board the consumer, at any time, is prevented from receiving or using the electric energy to be supplied under this agreement in whole, owing to any strike, riots, insurrection command of a civil or military authority, fire, explosion or act of God, then the consumer shall not be liable to pay the minimum charges/ minimum guarantee for the

period of the event(s) mentioned above, provided the consumer notifies the Board in writing of the occurrence of any event as noted above immediately with necessary details, to enable the consumer to prove that the occurrence is preventing/has prevented the consumer from receiving or using the full amount of power. If the consumer consumes power other than for factory lighting purposes during the occurrence of the event, he will not be entitled for the remission of minimum charges/minimum guarantee. However, the factory lighting consumption will be ignored for this purpose. The consumer will get reading of the main meter and factory lighting meter taken by the Board's authorized representative at the beginning and at the end of the event. The consumer will also keep the Board informed once in every week of further development regarding the event. No remission in the minimum charge/minimum guarantee as mentioned in the tariff schedule applicable will be considered, if no such notice is received by the Board. Subject as aforesaid, the consumer shall in any event be liable to pay the minimum charges/minimum guarantee every year as mentioned in the tariff schedule attached hereto. The decision of the Chief Engineer of the Board in this behalf shall be final and binding on the consumer."

On account of shortage of electric energy in the State of Rajasthan many times the Electricity Board is unable to meet with the requirements of electric power of all its consumers and in exercise of the powers conferred on it under Section 22 of the Indian Electricity Act, the Government of Rajasthan has been issuing notifications from time to time directing the Electricity Board to introduce cuts/ restrictions/staggering in the supply of electric power and energy to the various consumers. As a result of the aforesaid restrictions, the consumers, including the petitioners, are not able to avail/obtain the full supply of electricity as per their demand and have to rest content with the restricted electric supply made available to them in accordance with there restrictions. The petitioners claim that since the petitioners are unable to obtain full supply of electric energy from the Electricity Board on account of inability on the part of Electricity Board to meet their full demand, the Electricity Board cannot realize from the petitioners the minimum charges as fixed in the agreement and that the said minimum charges should be reduced in porporation to the percentage of the restriction i.e. the power-cuts, that are enforced by the Electricity Board in pursuance of the orders that are issued by the State Government from time to time and that the Electricity Board cannot recover the minimum charges as fixed in the agreement in

respect of the periods during which the power cut has been imposed by the Electricity Board. Since the Electricity Board did not agree to the proportionate reduction in the minimum charges payable by the petitioners they have approached this Court by filing these writ petitions wherein they have challenged the demand for minimum charges made by the Electricity Board in respect of periods during which the power cut was in operation.

4. The writ petitions have been contested by the Electricity Board. In the reply to the writ petitions, the stand of the Electricity Board is that since the Electricity Board has to incur heavy expenses in the establishment and maintenance of the plant and equipment for generation of electricity as well as in laying down the lines for transmission and distribution of electricity, it levies minimum charge on the consumers as per the tariff framed under Section 49 read with Section 79J of the Electricity (Supply) Act. The Electricity Board has also stated, in its reply to the writ petitions, that due to gap between the generation and demand there has been shortage of availability of energy all over the country and the said shortage and gap had been aggravated in Rajasthan due to failure of monsoon in the catchment areas of the river valley projects as well as the erratic performance of the Rajasthan Atomic Power Station, which has contributed a major proportion of the total generation of electric energy available in Rajasthan and in view of the wide gap between the demand and availability of electric energy the consumption of electric energy is regulated by imposing cuts and restrictions on the various categories of consumers. The Electricity Board has also stated that whenever large industrial consumers were subjected to have power-cuts and it was considered that the power made available during the period of power cuts is not sufficient to enable the consumer to consume electricity to the extent of minimum consumption, the Electricity Board has allowed exemption or relaxations in payment of minimum charges and has issued orders to that effect from time to time and the consumers were charged on the basis of actual consumption during the periods said relaxation was granted and necessary credit was given to them. According to the Electricity Board, the petitioners are not entitled to any proportionate reduction in the minimum charges during the period of power cuts in respect of the billing months other than those in respect of which the Board has granted relaxation in the minimum charges. In the reply that has been filed on behalf of the Electricity Board, a preliminary objection with regard to the maintainability of the writ petitions has also been taken on the ground that effective alternative remedy for settlement of disputes between the petitioners and the Electricity Board is available under Clause 30 of the

Agreement that has been entered into by each of the petitioners with the Electricity Board and in view of the availability of the said remedy, the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

5. In some of the writ petitions a rejoinder has been filed and in the said rejoinder it has been pointed out that since December 1984, the Electricity Board has started making proportionate reduction in the minimum charges in accordance with the percentage of the power cut and in support of the aforesaid plea, some of the bills for the period subsequent to December, 1984 have also been placed on record.

6. Before I deal with the contentions urged by the learned counsel for the petitioners in support of the writ petitions, it would be necessary to deal with the preliminary objections with regard to the maintainability of the writ petitions raised by Dr. L.M. Singhvi, the learned counsel for the Electricity Board.

7. Dr. Singhvi, has submitted that the relationship of the petitioner consumers and the Electricity Board is governed by the terms of the agreement that has been entered into by each of the petitioners with the Electricity Board and if the petitioners feel that the action of the Electricity Board is in violation of the terms of the said agreement, they should invoke the remedy that is available to them under the agreement and the jurisdiction of this Court under Article 226 of the Constitution cannot be invoked for the purpose of enforcement of their rights under the contract. In support of his aforesaid submission, Dr. Singhvi has placed reliance on Clause 30 of the agreement which is in the nature of an arbitration clause, that has been entered by the petitioners with the Electricity Board. Dr. Singhvi has also submitted that the petitioners cannot challenge the legality of the action of the Electricity Board on the ground of violation of Article 14 of the Constitution inasmuch as in contractual matters the right to Equality guaranteed under Article 14 of the Constitution is available only at the stage of formation of the contract by the State and the said article has no application in regulating the relationship of the contracting parties after the contract has been entered into. In support of his aforesaid submissions, Dr. Singhvi has placed reliance on the decisions of the Supreme Court in *Radhakrishna Agarwal v. State of Bihar*,¹ and in *Titagarh Paper Mills Ltd. v. Orissa State Electricity Board*,² and *Bisra Stone Lime Co. Ltd. v. Orissa State Electricity Board*,³

8. On behalf of the petitioners, it has, however, been submitted that the relationship of the petitioners and the Electricity Board is not purely contractual in nature, but is also governed by the provisions of the Electricity (Supply) Act as well as the Indian Electricity Act and that the agreement that has been entered into by the petitioners with the Electricity Board has been entered in pursuance of the aforesaid enactments and, therefore, it cannot be said that the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution. In this connection it has been submitted that the Electricity Board is State for the purpose of Article 12 of the Constitution and is bound by the limitation imposed by Article 14 of the Constitution and is required to act fairly and reasonably in its dealings with the consumers and that the action of the Electricity Board in refusing to make proportionate reduction in the minimum charges in consonance with the power cut is arbitrary and unreasonable. The learned counsel for the petitioners have also submitted that the remedy of arbitration as contained in Clause 30 of the agreement, is not effective and equally efficacious remedy inasmuch as the arbitration has to be preceded by a reference to the Chief Engineer of the Electricity Board and no time limit is prescribed for the Chief Engineer to decide the matter and in the meanwhile there is nothing to preclude the Electricity Board from disconnecting the electric supply of the consumer on account of his failure to pay the demand for minimum charges and also to recover the said charges from the consumer by coercive process. It has also been submitted by the learned counsel for the petitioners that the question as to whether the petitioners are entitled to proportionate reduction in the minimum charges, is a pure question of law which can more appropriately be decided by this Court than by the arbitrators and further that many of the writ petitions have been admitted and have been pending in this Court for two years and more and that in the circumstances the petitioners should not be non-suited on the ground of availability of alternative remedy.

9. With regard to the first objection raised by Dr. L.M. Singhvi based on the decision of the Supreme Court in *Radhakrishna Agarwal v. State of Bihar*, (AIR 1977 Supreme Court 1496) (supra), it may be stated that in Radha Krishna Agarwal's case the Supreme Court has upheld the view of the division bench of the Patna High Court that the cases in which breach is alleged of obligation by the State or its agents, can be set up into three types :

"(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted

to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed there under and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

As regards cases falling in the first category, the Patna High Court had expressed the view that in such cases the obligation could sometimes be appropriately enforced on a writ petition even though the obligation was equitable only. The Supreme Court did not express any opinion on the question whether such an obligation could be enforced under Article 226 of the Constitution for the reason that the case before the Court did not belong to "that category. As regards the cases falling in the second category the Supreme Court has referred to *K.N. Guruswamy v. State of Mysore*,⁴ and the *D. F. O., South Kheri v. Ram Sanehi Singh*,⁵ and has observed that where the source of a right was contractual but the action complained of was the purported exercise of a statutory power, relief could be claimed under Article 226 of the Constitution. With regard to the cases falling in the third category, the Supreme Court held that no writ or order can issue under Article 226 of the Constitution in such cases to compel the authorities to remedy a breach of contract pure and simple. In that context the Supreme Court has laid down that at the stage of entry into the field of consideration of persons with whom the Government could contract at all, the State is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers, but after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the contractual provisions but by the legally valid contract which determines rights and obligations of the parties inter se. According to the Supreme Court no question of violation of Article 14 or of any other constitutional provisions arise when the State or its agents purporting to act within this field perform any act and in this sphere they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.

10. The question which needs to be considered is as to whether the present case falls within the second category of cases i.e. contracts entered into between the person aggrieved and the State in exercise of a statutory power under certain Act or the Rules framed there under or they fall in the third category of laws, namely, where the contract entered into between the State and person aggrieved is non-statutory and purely contractual. Dr. Singhvi submits that present cases fall in the third category and the contracts are purely non-statutory, whereas the learned counsel for the petitioners have submitted that the said contracts fall in the second category and have been entered into in exercise of statutory power under Electricity (Supply) Act read with Indian Electricity Act. In this connection the learned counsel for the petitioners have invited my attention to Clause VI of the Schedule to the Indian Electricity Act which relates to requisition for supply of energy to owners or occupiers in vicinity by a licensee. The first proviso to Sub-clause (1) of Clause VI lays down that the licensee shall not be bound to comply with any such requisition unless and until the person making it, within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed. In view of Section 26 of the Electricity (Supply) Act, the Electricity Board is a licensee for the purpose of the Indian Electricity Act and the aforesaid provision contained in CL VI of the Schedule to the Indian Electricity Act is applicable to the Electricity Board. This shows that the agreements that have been entered into by the Electricity Board with the petitioners as consumers are in pursuance of the statutory obligation that has been imposed by the first proviso to Sub-clause (1) of Clause VI of the Schedule to the Indian Electricity Act. It is, therefore, not a case of a purely non-statutory contract, but it is a case of contract entered into in exercise of a statutory power. The present cases, therefore, fall in the second category of cases referred to in Radha Krishna Agrawal's case (supra). In relation to such cases, the law is well-settled that the State in the performance of its obligations under the contract cannot act arbitrarily and unreasonably.

11. In this connection reference may be made to a recent decision of the Supreme Court in *Gujarat State Financial Corpn. v. Lotus Hotels Pvt. Ltd.*,⁶ In that case the Gujarat State Financial Corporation had sanctioned a loan to M/s. Lotus Hotels Pvt. Ltd., for setting up a hotel and on the basis of the said sanction of loan, the said Company incurred expenditure and suffered liabilities to implement and execute the hotel project but subsequently the Gujarat State Financial Corporation refused to disburse the loan to the Company. The Company filed a writ petition under Article

226 of the Constitution in the Gujarat High Court and on the said writ petition the Gujarat High Court issued a mandamus directing the Gujarat State Financial Corporation to disburse the promised loan to the company in accordance with its letter of offer which was followed by an agreement. The Supreme Court upheld the aforesaid judgment of the Gujarat High Court. The main ground on which the Supreme Court based its judgment was the principle of promissory estoppel. But apart from the principle of promissory estoppel the Supreme Court was also of the view that the Court could interfere under Article 226 of the Constitution for the reason that the Gujarat State Financial Corporation could not be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct to the Company. In that context the Supreme Court has observed : --

"Viewing the matter from a slightly different angle altogether, it would appear that the appellant is acting in a very unreasonable manner. It is not in dispute that the appellant is an instrumentality of the Government and would be 'other authority' under Article 12 of the Constitution. If it be so, as held by this Court in *R.D. Shetty v. International Airport Authority of India*,⁷ the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance.

Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by 'other authority' as envisaged by Article 12."

12. The aforesaid decision shows that if the State has entered into a contract with the citizen in discharge and performance of a statutory duty, the State cannot be allowed to act arbitrarily so as to cause harm and injury from its unreasonable conduct to the citizens and the Court can grant appropriate relief under Article 226 of the Constitution. In the present cases the agreements that have been entered by the Electricity Board with the petitioner were so entered in the performance of the

statutory duty imposed by the first proviso to Sub-clause (1) of Clause VI of the Schedule to the Indian Electricity Act read with Section 26 of the Electricity (Supply) Act. In my opinion, therefore, the petitioner cannot be denied relief under Article 226 merely on the ground that the relationship of the petitioners and the Electricity Board is governed by agreements entered into by the petitioners with the Electricity Board.

13. I may now come to the other preliminary objection raised by Dr. Singhvi based on the availability of the alternative remedy under CL 30 of the agreements. The said clause reads as under : --

"In the event of any dispute or difference arising at any time between the supplier and the consumer in regard to any matter arising out (of) or in connection with the agreement such dispute or difference shall be referred in the first instance to the supplier's Chief Engineer and in the case of his decision not being accepted by the consumer the said dispute or difference shall be referred to the arbitration of two arbitrators, one to be appointed by each party hereto, and an umpire to be appointed by the arbitrators before entering upon the reference and the decision or award of the said arbitrators or umpire shall be final and binding on the parties hereto and any reference made under this clause shall be deemed to be a submission to arbitration under the Arbitration Act, 1940, or any statutory modification thereof for the time being in force.

The arbitrators or the umpire giving their or his decision shall also decide by which party the cost of the arbitration and award shall be paid and if by both, in what proportion."

14. A perusal of the aforesaid clause shows that it postulates that in the event of any dispute or difference arising between the Electricity Board and the consumer in regard to any matter arising out and in connection with the agreement, the said dispute or difference shall be referred, in the first instance, to the Chief Engineer of the Electricity Board and in case the decision of the Chief Engineer is not accepted by the consumer, the said dispute or difference shall be referred to the arbitration of two arbitrators, one to be appointed by each party and an umpire to be appointed by the arbitrators. In other words Clause 30 is in the nature of an arbitration clause but the arbitration is to be preceded by a reference to the Chief Engineer of the Electricity Board and after the Chief Engineer has given this decision in the matter, the consumer can take up the matter for arbitration if the decision of the Chief Engineer is not acceptable to them.

15. In *Titagarh Paper Mills Ltd. v. Orissa State Electricity Board*, (AIR 1975 Supreme Court 1967) (supra) the Supreme Court has upheld the decision of the Orissa High Court dismissing the writ petition on the view that the remedy of arbitration provided in the agreement was an equally efficacious remedy and the disputes arising out of contract should be raised before the arbitrators and could not be agitated in a writ petition under Article 226 of the Constitution. In that case the question was whether the Orissa State Electricity Board was competent to levy coal surcharge under the Electricity (Supply) Act and if not whether the said levy could be supported by the agreement entered into by the Orissa State Electricity Board with the appellant company. The Orissa State Electricity Board supported the levy of coal surcharge under Sections 49 and 59 of the Electricity (Supply) Act as well as Under Clause 13 of the agreement. The Supreme Court examined the question whether the coal surcharge could be levied under Sections 49 and 59 of the Electricity (Supply) Act, and held that the levy of coal surcharge could not be justified by resort to Sections 49 and 59 of the Electricity (Supply) Act As to whether the said coal surcharge could be levied under Clause 13 of the agreement, the Supreme Court held that the said question was covered by the arbitration clause contained in the agreement and that the High Court was right in exercising its discretion against entertaining the writ petition on merits in so far as it was directed against the validity of levy of coal surcharge under Clause 13 of the agreement, and that the merits of the contentions raised by the appellant company would have to be decided by arbitration in accordance with the arbitration clause contained in the agreement.

16. In *Bisra Stone Lime Co. Ltd. v. Orissa State Electricity Board*, (AIR 1976 Supreme Court 127) (supra), the Supreme Court reiterated the law laid down in *Titagarh Paper Mills*.

17. Dr. Singhvi has submitted that the present cases are fully covered by the aforesaid decisions of the Supreme Court and in view of the aforesaid decisions the writ petitions must be dismissed inasmuch as the alternative remedy of arbitration under Clause 30 of the agreement is available to the petitioners.

18. I have given my careful consideration to the aforesaid decisions of the Supreme Court and in my view the present cases cannot be said to be on par with the aforesaid cases. Clause 30 of the agreements in the present cases is not a simple arbitration clause as was contained in the agreement in the abovementioned cases before the

Supreme Court. Under Clause 30 of the agreements in the present cases, the arbitration has to be preceded by a reference to the Chief Engineer of the Electricity Board and no time limit is prescribed for the Chief Engineer to give his decision in the matter. The availability of the remedy of arbitration is thus dependent on the sweet will of the Chief Engineer of the Electricity Board. Moreover, there is no provision for obtaining any interim relief during the period the matter is pending before the Chief Engineer of the Electricity Board and while the matter is pending before the Chief Engineer, the Electricity Board may discontinue the supply of electricity to the consumer for non-payment of the bills and it may result in heavy and irreparable loss to the consumer. Furthermore, the nature of the dispute which is involved in the present cases is purely of a legal nature involving the question as to whether there should be proportionate reduction in the minimum charges is consonance with the percentage of power-cut and the said question can be more conveniently decided by this Court rather than by arbitration. Moreover in some of the writ petitions the petitioners have also raised the question that in exercise of its power under Section 24 of the Electricity Act the Electricity Board is not entitled to disconnect the electric supply of a consumer on the ground of non-payment of the bills in cases where the consumer raises a bona fide dispute about his liability to pay the charges claimed by the Electricity Board. The said question involves interpretation of the provisions of Section 24 of the Electricity Act and can rightly be agitated by the petitioners before this Court in a petition under Article 226 of the Constitution of India. It cannot also be lost sight of that all these writ petitions have been admitted and most of them have been pending in this Court for past two years and more and the parties will be put to great hardship and inconvenience if they are now required to take resort to remedy prescribed under Clause 30 of the agreement Taking into consideration the facts and circumstances referred to above, I am of the opinion that the petitioners cannot be non-suited on the ground of the availability of the alternative remedy under Clause 30 of the agreement The preliminary objections raised by Dr. Singhvi are, therefore, rejected.

19. I may now proceed to deal with the merits.

20. The controversy in the present cases centers on the question whether the petitioners are entitled to a corresponding reduction in the minimum charges in proportion to the power-cut imposed by the Electricity Board.

21. In *Saila Bala Roy v. Chairman, Darjeeling Municipality*,⁸ the concept of minimum charge has been explained as under:

"A minimum charge is not really a charge which has for its basis the consumption of electric energy. It is really based on the principle that every consumer's installation involved the licensee in a certain amount of capital expenditure in plant and mains on which he is to have a reasonable return. He gets a return when energy is actually consumed, in the shape of payments for energy consumed."

The aforesaid observations have been quoted with approval by the Kerala High Court in *Ratanial Murarka v. Kerala State Electricity Board*,⁹

22. Under the High Tension Tariff of the Electricity Board which is applicable to the petitioners the minimum charges have been prescribed and the consumer is liable to pay the minimum charge irrespective of the fact whether he consumes any electricity or not, but in cases where the consumption of electricity is more than the units of electricity for which the minimum charge is fixed, the consumer has to pay for the units of electricity actually consumed and in that event the minimum charge loses its significance. The minimum charge assumes importance in cases where the consumption of electricity by the consumer is less than the units for which the minimum charge is fixed because in that event the consumer has to pay the minimum charge although he has not consumed electricity to that extent Under the High Tension Tariff of the Electricity Board as applicable to the petitioners the units for which the minimum charge is payable constitute about 16% of the units which would be consumed if the consumer had availed the maximum demand as per agreement for all the 24 hours of the day during the whole month of 30 days.

23. In normal circumstances when there is no restriction in the supply of electricity, the consumer cannot make any grievance with regard to minimum charge because the said liability to pay minimum charge arises on account of his own inability to consume the prescribed quantity of electric energy. Difficulty, however, arises when there is restriction in the supply of electric energy to the consumer on account of inability on the part of the Electricity Board to meet the full demand of the consumer and a power cut is imposed. In such a case the consumer is unable to consume the electricity as per his demand on account of the imposition of the power cut by the Electricity Board for

the reason that the Electricity Board is not in a position to meet the demands of electricity of all the consumers.

24. In *M/s. Northern India Iron and Steel Co. v. State of Haryana*,¹⁰ the question which arose for consideration before the Supreme Court was whether the consumer was liable to pay the monthly demand charges in cases where the State Electricity Board was unable to supply the electric energy due to power-cut or any other circumstance beyond its control and as per the demand of the consumer according to the contract. In that case the Supreme Court was dealing with a two-part tariff which comprised of (i) monthly demand charges to cover investment, installation and the standing charge to some extent; and (ii) energy charges for the actual amount of energy consumed. In Clause 4(f) of the Schedule to the tariff in that case a provision was made that in the event of a lockout, fire or any other circumstances considered by the supplier to be beyond the control of the consumer, the consumer shall be entitled to a proportionate reduction of demand charges/minimum charges provided he serves at least three days' notice on the supplier for shut-down of not less than 15 days' duration. The Supreme Court while rejecting the claim of the appellant company that it was not liable to pay the monthly demand charges in cases where the State Electricity Board is unable to supply electric energy as per maximum demand, held that the circumstance of power-cut which disabled the Electricity Board to give the full supply to the appellant company because of the government order issued under Section 22B of the Electricity Act undoubtedly would be a circumstance which disabled the consumer from consuming electricity as per the contract and it entitled the consumer to a proportionate reduction of the demand charges. In that context the Supreme Court has observed :

"We are, therefore, of the view that the inability of the Board to supply electric energy due to power-cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered 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 monthly demand charge for a particular month will have to be assessed in accordance with Sub-clause (b) of Clause 4 of the tariff and there from a proportionate reduction will have to be made as per Sub-clause (f). We. hope in the light of the judgment, there will be no difficulty in working out the figures of the proportionate reduction in any of the cases and for any

period. In case of any difference or dispute as to the quantum of the demand charge or the proportionate reduction, parties will be at liberty to pursue their remedy as may be available to them in accordance with law."

The petitioners have placed strong reliance on the aforesaid decision of the Supreme Court and have submitted that in the light of the above decision, the petitioners are also entitled to a proportionate reduction in the minimum charges on account of the power-cuts imposed by the Electricity Board. On behalf of the Electricity Board, it has, however, been submitted that the aforesaid decision is not applicable to the facts of the present case inasmuch as in the case the tariff itself made a provision for proportionate reduction in the demand charges/minimum charges whereas in the present case the tariff does not contain a similar provision. In my view the aforesaid distinction sought to be drawn by the learned counsel for the Electricity Board is not material inasmuch as in the present cases a provision similar to that contained in Clause (f) of the tariff in that case is contained in Clause 17(a) of the agreements that have been entered into by the petitioners with the Electricity Board wherein it has been laid down that." If at any time the supplier is prevented from supplying electrical energy under this agreement, whether in whole or in part, owing to all or any of the causes mentioned in Clause ten of this agreement, then the minimum charges payable by the consumer shall be reduced proportionately."

25. In the return that has been filed on behalf of the Electricity Board in some of the writ petitions, it has been stated that whenever the large industrial consumers were subjected to heavy power-cuts and it was considered that the power made available during the period of power-cuts is not sufficient to enable the consumer to consume electricity to the extent of minimum consumption, the Board has allowed exemption or relaxation in payment of minimum charges and issued orders to that effect from time to time. The said return also shows that during the years 1980, 1981, 1982 and 1983, whenever the consumers were subjected to heavy power-cuts, the Board had allowed the relaxation to the large industrial consumers from the payment of minimum charges for the billing months or March and April, 1980, May, 1980, January to April, 1981, December, 1981, January to March, 1982, April, 1982, May to July, 1982, February and March 1983 and April, 1983. In support of this assertion the Electricity Board has also placed on record (As Annexures R/1 to R/18) the various orders that were passed during the years 1980 to 1983 whereby the relaxation was granted for minimum charges for the power-cut periods. The case of the Electricity Board is that such

relaxation in minimum charges was granted when the power-cut was so heavy that the power made available during the period of power-cuts was not sufficient to enable the consumer to consume the electricity to the extent of minimum consumption. In other words, the case of the Electricity Board is that if the power that was made available to the consumer during the power-cuts is sufficient to enable him to consume electricity to the extent of minimum consumption, no relaxation in the minimum charges can be granted.

26. In my view the petitioners are justified in claiming that in cases where the Electricity Board is unable to supply electric energy to a consumer as per his demand on account of non-availability of the electric energy and consequent imposition of power-cut, there should be reduction in the minimum charges in proportion to the power-cut that has been imposed. It is possible to visualize situations where during a part of the billing month the consumer may not be able to avail the electric energy that is supplied to him to the full extent on account, of certain reasons, e.g. labour trouble, shortage of raw material, etc. If the power-cut is not imposed, the consumer can make good the deficiency in the consumption of electricity during that part of the month in the remaining part of the month. On account of imposition of the power-cut, the consumer may not be able to do so during the remaining part of the billing month. This shows that as a result of the imposition of power-cut, the consumer would be made to bear the minimum charges as per agreement even though he could not consume the electric energy to the extent of minimum consumption requisite for the minimum charges on account of the power-cut imposed by the Electricity Board. Such an eventuality would be avoided by allowing proportionate reduction in the minimum charges in proportion to the power-cut as directed by the Supreme Court in *Northern India Iron and Steel. Co. v. The State of Haryana*, (AIR 1976 Supreme Court 1100) (supra) and as contemplated in Clause 17(a) of the agreement entered into by the Electricity Board with the petitioners.

27. The Electricity Board also does not dispute that the consumer must be granted relief in the matter of minimum charges when there is a power-cut. The stand of the Electricity Board is that the consumer can be granted relaxation in the matter of payment of minimum charges only when it is not possible for him to consume electricity to the extent of minimum consumption on account of the power-cut imposed by the Electricity Board. Since the minimum charges are payable for a consumption which is about 16% of the maximum demand this would mean that the consumer would be entitled to relief only in those cases where the power-cut is more

than 84% for the entire billing month because if the power-cut is less than that it would be possible to say that the consumer was in a position to consume electricity to the extent of the minimum consumption. This formula operates unjustly and inequitably against a consumer who is unable to avail of electric energy during a part of the billing month on account of circumstances beyond his control, viz. closure of the industry due to labour trouble or shortage or non-availability of raw material, and who is unable to make good the deficiency in consumption in remaining part of the billing month on account of the imposition of the power-cut. A proportionate reduction in the minimum charges in proportion to the power-cut has been held by the Supreme Court to be, "a just, equitable and legal situation of the difficulty" in *Northern India Iron and Steel Co. v. State of Haryana*, (AIR 1976 Supreme Court 1100) (supra). It may be mentioned that the Electricity Board itself has adopted this practice since December, 1984 and it has been allowing proportionate reduction in the minimum charges in proportion to the power-cut. If the Electricity Board has itself decided to apply this formula of proportionate reduction in the minimum charges in proportion to the power-cut, there appears to be no valid reason why this relief should be restricted only to power-cuts imposed since December 1984 and why it should not be extended to power-cuts imposed earlier to December 1984. In my opinion, therefore, the petitioners are entitled to a declaration that the minimum charges should be proportionately reduced in consonance with the percentage of power-cut imposed by the Electricity Board. This would mean that bills for supply for electricity to the petitioners which are under challenge in the writ petitions and the bills for the periods when there was power-cut during the pendency of the writ petitions in this Court must be revised by allowing a proportionate reduction in the minimum charges in proportion to the percentage of the power-cut imposed during a particular billing month.

28. In the result the writ petitions are allowed and it is declared that the petitioners are entitled to proportionate reduction in proportion to the percentage of power-cuts imposed during the particular billing month, in the minimum charges payable by them and the Electricity Board is directed to work out the figures of the proportionate reduction in the minimum charges payable by each of the petitioners under the bills under challenge in the writ petition and the bills for the periods during which there was power-cut during the pendency of the writ petitions. If on a revision of the bills any amount is found refundable to a petitioner consumer, it may be refunded to him or it may be adjusted against the nature bills. If any amount is found payable by the petitioner consumer to the Electricity Board as a result of the revision of the bills, the

said petitioner will pay the demand as per the revised bills within a period of one month from the receipt of the said bills failing which it will be open to the Electricity Board to recover the arrears in accordance with law. In the facts and circumstances of the case, the parties are left to bear their own costs in these writ petitions.

Petition allowed.

Cases Referred.

1. (1977) 3 SCC 457
2. (1975) 2 SCC 436
3. AIR 1976 SC 127
4. AIR 1954 SC 592
5. (1971) 3 SCC 864
6. (1983) 3 SCC 379
7. (AIR 1979 SC 1628)
8. AIR 1936 Cal 265
9. ILR (1976) 1 Ker 435
10. AIR 1976 SC 1100