

(1993) 11 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 1736 of 1986

Amalgamated Drugs and Pharmaceuticals Private Limited and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Citation : (1993) 11 PAT CK 0006

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Petitioner No. 1 in this application is an industrial consumer of electrical energy; it gets supply from the Bihar State Electricity Board ("the Board", for short) in terms of the High Tension Agreement, in the statutory form, which the petitioner had been obliged to execute as a pre-condition for getting its electrical connection. In this application it questions the right of the Board to demand the minimum guaranteed charges in terms of Clause 4 of the agreement and seeks an appropriate writ or direction quashing the annual minimum guarantee bills as contained in Annexure 3 series. It also seeks quashing of the disconnection notice, dated 12-11-1984, a photo copy of which is to be found at Annexure-5, served on it for non-payment of the minimum guarantee bills.

2. This is an application of the year, 1986; it has been awaiting hearing by this Court for the past seven years. In the mean while, in several other cases, this Court and the Supreme Court have had occasions to make pronouncements on this question and the law relating to the minimum guaranteed charges now rests with the Supreme Court decision in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, . In this decision the Supreme Court laid down that any interruption in the supply of electricity occasioned by tripping", load shedding "or power cut" or even on account of shortage in generation of electricity may entitle the consumer to make a claim for proportionate reduction (in terms of Clause 13 of the statutory agreement), but would not affect the Board's right to demand and realise minimum guaranteed

charges in terms of Clause 4 of the agreement.

3. At first glance this application appeared fully covered by the aforesaid Supreme Court. But Mr. Ashok Sen, learned counsel for the petitioners, argued otherwise. He was not satisfied with the remedy of making a claim before the Chief Engineer of the Board for proportionate reduction for the period of non supply of electricity in terms of Clause 13 of the agreement. Mr. Sen submitted that if he could successfully show that the Board had no legal right to make a demand for the minimum guaranteed charges as stipulated in Clause 4 of the agreement then the question of any proportionate reduction in terms of Clause 13 would not arise. Mr. Sen contended that the materials brought on record of this case fully established that the Board failed to fulfil the conditions on which its right to realise the minimum guaranteed charges, as envisaged under Clause 4 of the statutory agreement, was founded and, hence, in the facts and circumstances of this case the action of the Board in making a demand for annual minimum guaranteed charges was arbitrary, unreasonable and in violation of the statute as also the provision of the statutory agreement.

4. Before examining the submissions of Mr. Sen it will be appropriate to set out the basis of this case and to take stock of the relevant provision of the statutory agreement between the parties.

5. The writ petition has been filed on behalf of the two petitioners; petitioner No. 1 is a registered company and petitioner No. 2 is its Managing Director. The Company is engaged in the manufacture and sale of drugs and pharmaceutical products. It has one of its plants at the Industrial Area, Tilrath, Begusarai, Bihar where it manufactures ampicillin and other basic drugs. The manufacturing process has been narrated in some detail, the sum and substance of which is that these drugs are manufactured from costly and imported raw material. For obtaining the desired objects chemical reactions are required to be carried out for precisely specified times under highly controlled conditions of temperature and pressure etc. In order to achieve and maintain the required conditions under which the chemical reactions are to take place it is imperative to have an uninterrupted supply of electrical energy. Any interruption in the supply of electricity would make it impossible to maintain the controlled conditions of temperature and pressure etc. and this in turn would not only dislocate the manufacturing process but would also lead to the waste of costly raw materials. It is further stated that the petitioners entered into a statutory agreement with the Board for the supply of electricity at the contract demand of 120 Kilo volts Amperes (120 KVA). The agreement was executed on the High Tension agreement form on 15-2-1982 and as per one of its conditions (vide Clause 1) the Board was obliged to maintain a continuous supply of electricity to the petitioners. A grievance is then made that the Board hopelessly failed in ensuring continuous supply to the petitioners' plant. The supply position was very erratic and uncertain and interruptions due to "power cuts" and "black cuts" became endemic. The intervals of non supply of electricity became increasingly

longer, more frequent and unscheduled and it became impossible for the petitioner to depend upon the Board's supply of energy to carry on the normal manufacturing process; so much so that the petitioners, having no option, took steps at a cost of Rs. 2,40 lacs for the installation of stand by captive generation set of a capacity of 120 KVA to run the plant. Further, figures are furnished in the writ petition to show that there was a vast gap between the total generating capacity of the Board and the aggregate of its contract demands. Later on a supplementary affidavit and yet another affidavit in reply to the respondents' counter affidavit were filed on behalf of the petitioners. These two affidavits are full of detailed figures (mostly taken from the Board's official records and the publications made by the Board). These figures are intended to show that there is a vast gap between the total generating capacity, let alone the actual generation by the Board and the aggregate of its total commitments to all its consumers in the different sectors. From this it is sought to infer that interruption in supply of electricity to any consumer is inevitable and is the result of the Board accepting contract demands, the aggregate of which is far in excess of its capacity, let alone its actual generation. A reference to this aspect of the matter shall be made later on while examining the submissions of Mr. Sen in greater detail.

6. Against this pile of facts and figures the Board appears to have adopted a totally indifferent attitude. It has filed a counter affidavit" and a supplementary counter affidavit. But both are completely bare, and to put it (sic) quite unsatisfactory. In its affidavits it does not offer any explanation for its alleged inadequacies but keeps on repeating that the writ petition is not maintainable and the petitioners can only seek proportionate reduction by making a claim before its Chief Engineer in terms of Clause 13 of the agreement. All the detailed figures relating to its generating capacity and the aggregate of its contracted demands are answered in five words, namely those are matter of records.

7. At this stage, it will be useful to take a look at Clauses 1, 4 and 13 of the statutory agreement. A photostat copy whereof is to be found at Annexure-2. At one time, a Bench of this Court found that Clause 1 of the agreement contained the stipulation obliging the Board to maintain a continuous supply of electricity to the consumer till the term of the agreement. In appeal from the decision of this Court, the Supreme Court held otherwise. According to the Supreme Court Clause 1 did not contain any such stipulation and its contents had an altogether different meaning and, in fact, it was not very material so far as the controversy relating to the minimum guaranteed charges was concerned. The material abstract from Clause I of the agreement is re-produced below.

"a(a): The Board shall furnish to the consumer and the consumer shall accept at the point of supply mentioned in the schedule hereto, on and from the date on which the said premises shall be connected with the supply distributing mains and during the continuous of the agreement, a constant supply of electrical energy at the pressure of -- Volts 50 cycles, 3 phases, 3 words, alternating

current system subject to standard variations as provided in Indian Electricity Rules, 1956 or any other statutory modification thereof as may be in force from time to time for the purpose and up to the maximum specified (hereinafter referred to as the contract demand) and under the conditions laid down in the schedule.

Provided firstly that the supply of electricity as stipulated above may, with previous general or particular warning be regulated, curtailed, staggered, or cut off altogether by or on behalf of the Board if in the opinion of the Board or its Electrical Executive Engineer for the supply area concerned be power position or any other emergency in the power system warrants such course of action.

Provided secondly that the Board shall in no case whatsoever have any liability for any compensation to the consumer on account of failure in part or whole of supply of electrical energy.

(b) _ _ _ _ _

Provided

Provided -- -- -- _ - -- --

(Note -- -- -- -- -- (b) _ _ _ _ _ --

The provision relating to the minimum guaranteed charges as contained in Clause 4 of the agreement is as follows:

"4(a) Subject to the minimum contract demand applicable for the category of supply in which the consumer falls as per Board's tariff, the consumer shall pay to the Board for the energy so supplied and registered or taken to have been supplied as aforesaid at the appropriate rates applicable to the consumer according to the tariffs framed by the Board and in force from time to time, the presently enforced tariffs being given in the schedule to this agreement for easy reference. Such reference is subject to provisions of Clause 14 appearing hereinafter.

Provided that notwithstanding anything said above but subject to the provisions of Clause 13 appearing hereinafter, the consumer shall have to pay minimum charges after, the consumer shall have to pay minimum charges as specified in the above said tariffs framed by the Board and enforced from time to time irrespective of whether energy to that extent has been consumed or not. (Such minimum charges are referred as "minimum guaranteed charges" at other places in agreement).

(b) For the purpose of this agreement the minimum demand of the consumer for each months shall be largest total amount of Kilovolt amperes (KVA) delivered to the consumer at the point of supply during any consecutive 30 minutes in the month.

(c) Maximum demand charges for supply in any month will be based on the

maximum KVA demand for the month or 75 per cent of the contract demand whichever is higher, subject to provision of Clause 13. For the first twelve months, will however, be based on the actual monthly maximum demand for that month.

(d) That part of minimum charges referred to in provision to Sub-clause (a) above, if not billed every month, the assessment for the same will be generally made at the end of the year commencing from the 1st April to 31st March of the following year which is the financial year of the Board notwithstanding any agreement entered into in between this period, in which case the minimum guarantee will be proportionate for the period for which the consumer is connected. Any bill on account of the minimum guaranteed consumption for the year part thereof will be submitted by the end of June in each year."

The next relevant provision is contained in Clause 13 of the agreement. It envisages that if on account of circumstances beyond the control of the consumer it has been prevented from receiving or using the electrical energy supplied to it or conversely if for similar reason the Board was unable to supply electrical energy, then the minimum guaranteed charges shall be proportionately reduced on a claim made in this regard before the Chief Engineer of the Board. Clause 13 is as follows:

" 13. If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to strike, riots, fire, floods, explosions, act of God or any other case reasonably beyond control if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charges set out in the Schedule shall be reduced in proportion to the ability of the consumer to take of the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final.

Note: The terms Chief Engineer, includes Additional Chief Engineer for the area concerned."

The material facts in brief and the relevant clauses from the statutory agreement have been set out above. However, before proceeding to examine the submissions advanced by Mr. A. K. Sen, it will also be useful to have a very brief over view of how the Courts have dealt with the question of the minimum guaranteed charges.

8. The conflicting claims of the Electricity Board and the consumer over the minimum guaranteed charges came up before the Supreme Court in the case of Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, . In this case the Electricity Board was constrained to enforce "power cuts" following statutory and binding order issued by the State Government. Notwithstanding the power cuts, the Board insisted on fully realising the demand charges. The consumer, on the other hand, maintained that in view of the

Board's failure to supply the total demand as per the agreement, it could only claim the energy charges and not the demand charges. The two extreme stands taken by the contending parties were reconciled by the Supreme Court (to the satisfaction and agreement of the parties) by bringing the interruptions in supply on account of power cuts" within the ambit of Clause 4(f) of the tariff framed by the Haryana Electricity Board. The aforesaid Clause 4(f) of the Haryana tariff which is similar to Clause 13 of the statutory agreement in the case in hand is reproduced below:

"4(f) Force Majeure: In the event of 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 Court, thus, held that the incidents of "power cuts, which prevented the Board from giving full supply to the consumer because of the Government order were undoubtedly a circumstance which disabled the consumer from consuming electricity as per the contract. And, it was a circumstance which was beyond its control and could not be considered otherwise by the Board. It accordingly entitled the consumer to a proportionate reduction in the demand charges.

9. It is then to be noted that a Bench of this Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, held that Clause (1) of the agreement (quoted herein-above) obliged the Board to maintain a continuous and uninterrupted supply of electrical energy to the consumer during the term of the agreement and the Board's failure to do so would deprive it of its right to demand any minimum guaranteed charges in terms of Clause 4 of the agreement. The judgment of this Court went in appeal before the Supreme Court and was reversed in Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, . The Supreme Court held that Clause 1 of the agreement was not very material for a decision on this controversy. It further held that the expression "constant" in Clause 1 was not used in the sense of a continuous supply but was relatable to the supply of electricity at a constant of volts, cycles, phases, wires etc. In this decision the Supreme Court conclusively pronounced, "that where the Electricity Board fails to supply power because of shortage of energy, power cut or any other circumstance as per demand of the consumer according to the contract it will be considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract." The Supreme Court further held that in its opinion the High Court was not right in coming to the conclusion that the consumer was not liable at all to pay the minimum guaranteed charges. In fact the consumer was only entitled to the proportionate reduction. In other words, the Supreme Court held interruptions in supply of energy on account of tripping, load shedding, power cuts as also shortage in supply as circumstances beyond the control of the consumer preventing it from consuming electricity as per the contract and, thus,

qualifying for proportionate reduction in terms of Clause 13.

10. The facts of the case, the provisions of the statutory agreement and the judicial pronouncement noticed above constitute the background in which the submissions of Mr. Sen is to be considered. Mr. Sen developed his submissions step by step and it will, therefore, be quite convenient to follow Mr. Sen step by step and premise by premise. He first made his submission regarding the nature of the minimum guaranteed charges and pointed out that these charges were in the nature of a reasonable return on the capital expenditure and other standing charges incurred by the Board in order to meet the possible maximum demand for the consumer. Mr. Sen contended that the provision contained in Clause 4 of the agreement had its statutory source in the proviso to Section 22 of the Indian Electricity Act, 1910 and owed its justification and validity to the said proviso, Section 22 of the Indian Electricity Act, 1910 is as follows:

"22. Obligation on licensee to supply energy.

Where energy supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of licence, be entitled on application to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

Mr. Sen asserted that the right to realise the minimum guaranteed charges was directly relatable to the aforequoted provision. In support of his submission regarding the nature of the minimum guaranteed charges Mr. Sen relied upon a decision of the Supreme Court in the case of *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, wherein it was observed as follows :

"The consumers could put switches on whenever they like and, therefore, the plaintiff had to keep every thing ready so that power is supplied the moment a 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."

Mr. Sen in this regard also relied upon a decision in the case of *Mukand Iron & Steel Works Ltd. v. Maharashtra State Electricity Board*, AIR 1982 Bombay 580 (paras 7, 8, 9 and 10) where this aspect of the matter has been dealt with at

some length. He also cited the case of Andhra Steel Corporation Ltd. V. A. P. State Electricity Board, (1991) 3 SCC 263 at 269 para 9 : (AIR 1991 SC 1456 at p. 1459), where the Supreme Court took note of the observations made in the case of Amalgamated Electricity Co. Ltd, (AIR 1975 SC 2235) (supra) and observed as follows (at p. 1459 of AIR):

"With regard to this submission, it is at the outset necessary to appreciate the genesis of prescription of minimum charges. To put it succinctly the purpose of prescribing minimum charges is to ensure that no undue loss is caused "to the Electricity Board because the absence of minimum charges is likely to create a tendency in a prospective consumer to have connection for an inflated requirement and having agreed to meet such requirement, the Electricity Board would be under an obligation to maintain the supply up to that requirement even if no or very little energy is consumed."

In this regard, Mr. Sen also cited a decision reported in 1989 (Supp) 2 SCC 275 (283-286): (Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, .

11. On the basis of these decisions, the premise that Mr. Sen wished to establish was that the minimum guaranteed charges in their nature were simply a reasonable return to Board for the investments and capital out lay made by it in order to supply electricity to a consumer at its maximum demand.

12. As a corollary to this Mr. Sen contended that divorced from the proviso to Section 22 the realisation of any minimum guaranteed charges would be wholly insupportable. It would amount to conferring on the Board the right to recover the minimum guaranteed charges even though it did not set up the necessary capital and did not incur any charges for establishing and maintaining the infrastructure for supplying the maximum demand contracted with the consumer. This would make the provision contained in Clause (4) of the agreement wholly arbitrary, unfair, unreasonable and unconscionable and, therefore, ultra vires Article 14 of the Constitution. Then, relying upon the Supreme Court decision in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Mr. Sen submitted that in that event the Court shall not allow the Board to realise any minimum guaranteed charges on the basis of Clause(4) of the agreement taking advantage of its unequal bargaining power.

13. Coming then to Clause 13 of the agreement, Mr. Sen contended that even after making the capital investments and incurring other standing charges for the establishments and maintenance of the requisite infrastructure the Board, for reasons beyond its control, may not be able to maintain a continuous supply of electricity to the consumer. Then the consumer may be entitled to proportionate reduction for the period of non-supply of electricity and may make a claim before the Chief Engineer of the Board in terms of Clause 13 of the agreement. Referring to the Supreme Court decisions Mr. Sen submitted that their import

was only that interruptions in the supply due to any reason, including power cut or shortage in the generation of energy were held to be circumstances beyond the control of the consumer preventing it from consuming electricity as per the contract and hence these circumstances also qualified as ground for proportionate reduction under Clause 13.

14. Finally Mr. Sen laid great stress on the point that it was one thing that despite having made the capital investments and having incurred other standing charges for the establishment and maintenance of the requisite infrastructure the Board, for various reasons was unable to maintain a continuous supply of electricity to the consumer. It was an entirely different proposition, however, that the Board was inherently incapable of maintaining a continuous supply of electricity to the consumer for the simple reason that it had not made the necessary capital investments and had not been incurring other standing charges towards the establishment and maintenance of the infrastructure necessary to meet the maximum demand contracted with the consumer.

15. Mr. Sen laid considerable stress on this last formulation and sought to distinguish the Supreme Court decision in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, on the basis of this formulation. Mr. Sen contended that in Dhanwat Mills, the Supreme Court was merely told that the Boards' power supply was frequently interrupted on account of tripping, load shedding and power cut which incidents the Court held as circumstances preventing the consumer to consume electricity as per the contract and therefore, qualifying in terms of Clause 13 of the agreement. Mr. Sen further submitted that in that case the Supreme Court had very rightly upheld the Board's right to demand the minimum guaranteed charges as in that case it was neither pleaded nor argued that the Board had not made any capital investments and was not incurring any standing charges either. Under that circumstance, according to Mr. Sen, the Court was very right in protecting a reasonable return on the investment made by the Board and the standing charges incurred by it. In a given circumstance, the tripping, load sheddings and power cuts may be temporary phenomena arising from various reasons including the inefficiency and incompetence of the present management of the Board. That, however, may not be a ground not to safeguard a reasonable return on the Board's capital investments and the charges incurred by it (provided, of course, investments were made and charges were incurred) and it may be hoped that given a reasonable and adequate protection on its investments and recurring charges, in due course the Board may pull through a temporary bad patch and may be able to meet all its commitments. But the case in hand according to Mr. Sen was quite different from Dhanwat Mills" inasmuch as in this case be proposed to demonstrate before the Court that the Board, had, in fact, not made the required capital investments and was not incurring the standing charges necessary for the establishment and maintenance of the requisite infrastructure to meet its commitments.

16. Up to now I have recorded the submissions made by Mr. Sen which are more or less in the nature of abstract propositions. The submissions on which he has sought to distinguish the Supreme Court decision in Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, is also an extension of the abstract propositions made by him. In this case, however, I am saved from either categorically rejecting Mr. Sen's propositions or firmly upholding them. I am also spared any consideration whether he has been able to make out any real distinction which should reasonably take this case put of the ratio of the Dhanwat Mills" case. This is for the simple reason that one comes to the weakest and actually untenable link in the chain of Mr. Sen's submission as he undertakes the application of these propositions to the facts of this case. As noted above the key-stone of Mr. Sen's argument is that on the pleadings of this case it can be conclusively demonstrated that the Board had not made the necessary capital investments and was not incurring standing charges to establish and maintain the require infrastructure to meet its commitments to the consumer. If he failed to establish this then all his abstract propositions, even if accepted, would be of no value and cannot get him any relief in this case. I find that this actually is the position.

17. In support of his contention Mr. Sen primarily relied upon the year-wise figures given in a statement labelled as "Energy Purchased, Generated And Available For Sale by B.S.E.B. This statement has been incorporated in the supplementary affidavit on behalf of the petitioners. The figures relating to the year 1984-85 show that the Board had the installed generating capacity of 1153.63 MW. The actual generation was, however, as low as 316.92 MW; 44.45 MW was consumed within the power station and sub-stations and the energy sent out from the power station was 272.47 MW. The Board additionally purchased 218.77 MW. After accounting for the losses in transmission and distribution, it had 377.56 MW available for sale. As against this, the total connected load was 2066 MW. Similarly for the year 1988-89 the generating capacity was 1548.63 MW actual generation was at 517.98 MW. Electrical energy sent out from the power station was quantified at 447.31 MW. Additional 378.20 M W was purchased and after accounting for the losses 641.87 M W was available for sale against the total connected load of 2342 MW. Taking the figures for the year 1984-85 Mr. Sen argued that even if all other considerations adverse to the Board are to be disregarded (such as the pathetically low generation in relation to the generating capacity and the inordinately high transmission/distribution losses) the undesirable fact remained that the Board had the generating capacity of 1153.62 MW. In other words, it had made capital investments only for the generation of 1153.63 MW. It further purchased 218.77. Hence the total investments made by the Board were only to the extent of 1372.40 M W against the total connected load of 2966 MW. Similar was the case for the year 1988-89. On the basis of these figures Mr. Sen submitted that it was apparent that the Board's capacity to supply was not even approximate, let alone equal, to its total connected load and the capital investments made by it

were far short of its commitments. Thus, according to Mr. Sen's submissions the Board did not fulfil the pre-conditions for the demand and realisation of the minimum guaranteed charges.

18. In my opinion, the fallacy in this argument lies in the assumption that the Board is required to supply electrical energy at par with its total connected loads at all times throughout the year. This is a wholly unfounded and incorrect assumption and in fact at no time the Board is required to supply energy equal to its total connected load. To give an analogy this argument is similar as finding fault with a bank for not always keeping in readiness all the money deposited with it by the depositors or expecting a members club to have meals ready at all meal times for all its members. Indeed it is a theoretical possibility that all the depositors may want to withdraw all their deposits at one time or in a club all its members may turn up at a meal time and want to be served with meals but it is only a possibility in theory and it does not happen in actuality. By experience a bank learns that it can carry on its business efficiently and normally by keeping in readiness at any one time only a fraction of its total deposits. Similarly a club administration by experience learns that it is only a certain percentage of the total members that turn up at meal times on different days in a week. In the same way, the Board's total connected load is by no means the demand of energy which the Board may have to meet at any given time. It is common knowledge that the demand of electrical energy in terms of KVA varies in different sectors during different parts of the year and even during the day and night times. The undertakings, supplying energy for domestic purposes in urban centres in this State are known to have different demands during to different hours of the day and night. It is again well known that in the eastern region of the country where this State is situated, domestic demand for electricity is much higher during the summer months when fans, air coolers, air conditioners etc. are in use than in the winter months when these appliances are put off and the winter being not so severe or long as in the northern region of the country, heaters etc. are very seldom used. Again there are industrial units (e.g. cold storage, sugar factory etc.) which operate during a particular season and the demand of electrical energy in those industries goes up very high in season and again comes down during the slack period. Similarly during the summer months before the onset of monsoon heavy demand of electrical energy is made in the farming sector for irrigation purposes. After the onset of monsoon municipal corporations and flood control agencies are often required to operate heavy pump sets for the discharge of excess flood waters and they make a very high demand of electrical energy for a brief period of a few weeks. These are only some of the common instances which come to mind and such illustrations may be multiplied by many fold. What is intended to be shown is that the total connected load is the aggregate of all those demands which may be made on the Board at one time or the other but it never implies that the Board is required at a given time to supply electrical energy at par with the total connected load.

19. For the reasons aforesaid, I am unable to find as suggested by Mr. Sen that

the Board had not even made the capital investments and was not incurring the charges the establishment and maintenance of the necessary infrastructure to meet its commitments to all its consumers. The petitioners having failed in this endeavour all the propositions advanced by Mr. Sen, as noted above, would be of no avail even if they were accepted to be correct. I, thus find no merit in this application and see no reason to restrain the Board from demanding and realising from the petitioners the minimum guaranteed charges.

20. Thus what had appeared to be the legal position at the first glance appears to be true even after a lengthy consideration of submissions; this case is fully covered by the Supreme Court decision in Dhanwat Mills" case. As per the directions in that decision the petitioners will of course be entitled to claim remission in terms of Clause 13 of the agreement. I accordingly direct that in case a claim, in respect of the impugned bills, is made by the petitioners in terms of Clause 13 of the agreement before the Chief Engineer-cum-General Manager of the Board within six weeks from today, it will be examined and disposed of in accordance with law within three months from the date of its filing. The petitioners shall make payment accordingly.

21. In the result, this application is dismissed with the aforesaid direction. No order as to costs.