

(2003) 10 KAR CK 0059

In the Karnataka High Court

Case No : Writ Appeal No's. 1049, 1198, 1285, 1286, 1301, 1640, 1723, 1724, 3261 to 3277, 3298 and 4626 of 2001 and 2304, 3080 to 3093 of 2002

Ananth Engineering Works and Another

APPELLANT

Vs

Karnataka Electricity Board (KPTCL) and Another

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Electricity (Supply) Act, 1948 — Section 26, 49, 79 (j)
Electricity Act, 2003 — Section 22

Citation : (2004) 3 KarLJ 337 : (2003) 4 KCCR 3070

Hon'ble Judges : N.K. Jain, C.J.; V.G. Sabhahit, J

Bench : Division Bench

Advocate : M. Shivappa, in W.A. Nos. 1285, 1286 and 1640 of 2001; S.M. Chandrashekar, in W.A. Nos. 1049 and 3298 of 2001; M.R. Narasimha Murthy, in W.A. No. 1198 of 2001; N. Krishnanada Gupta, in W.A. Nos. 1301, 3261 to 3277 and 4626 of 2001 and 2304 to 3093 of 2002; D. Leela Krishnan, in W.A. Nos. 1723 and 1724 of 2001, for the Appellant; M. Shivappa, for Respondents-1 and 2 in W.A. No. 3261 of 2001 and for Respondent-1 in W.A. Nos. 3262 and 3263 of 2001; S.M. Chandrashekar, W.A. Nos. 1301 for Respondent-1 and 2 in W.A. and for Respondent in W.A. No. 4626 of 2001; M.R. Narasimha Murthy in W.A. Nos. 3274 of 3277 of 2001; N. Krishnanada Gupta in W.A. Nos. 1049, 1198, 1285, 1286, 1640 and 3298 of 2001; D. Leela Krishnan in W.A. Nos. 3264 and 3265 of 2001; M.S. Bhagawat, for Respondents-1 and 2 in W.A. No. 3266 of 2001; K. Gopala Hegde, for Respondents-1 to 4 in W.A. Nos. 3267 to 3270 of 2001 and for Respondent-1 in W.A. No. 3271 of 2001; J.M.D. Cunha, for Respondents-1 and 2 in W.A. Nos. 3272 and 3273 of 2001; Lakshmikanth Reddy, for Respondent in W.A. Nos. 1723 and 1724 of 2001; Y. Lakshmikanth Reddy and Y. Malathi Reddy, W.A. Nos. 2304 and 3080 to 3093 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.

1. These intra-Court writ appeals arise out of the common order passed by the

learned Single Judge dated 19-1-2001, in W.P. No. 24526 of 1996 and connected writ petitions. Common questions of fact and law are involved in all these appeals. As agreed, the appeals are disposed of by this common order.

2. For the sake of convenience, the facts in W.P. No. 24526 of 1996, leading upto these appeals, are taken.

Writ petitioners in W.P. No. 24526 of 1996 (hereinafter called "Consumers") are the owners of special plot No. 2, situate in Industrial Estate, M.S.K. Mill Road, Gulbarga. They have put up structure on the said site consisting of several tenements. On construction of cellar and first floor, an application was made to the Kamataka Electricity Board (hereinafter called "Board") for supply of electricity to the said premises measuring 750 sq. metres, applying for the load of 6.72 K.Ws., which was sanctioned by order dated 19-6-1995. On payment of the requisite amount, the Consumers got connection to the celler and the ground floor. The Board has in all, installed 28 meters to the said premises. Thereafter, on completion of construction of the first floor comprising of the total plinth area of 947.12 sq. metres, the Consumers applied for supply of 9.32 K.Ws., for the entire building and for 13 additional connections. The Board requested the Consumers to pay a sum of Rs. 3.55 lakhs being service charges for giving power, and in the alternative, authorised them to install a transformer and to handover the same to the Board for supply of energy and for maintenance, as per regulation. The Consumers challenged the said demand made under the Kamataka Electricity Board Electricity (Supply) Regulations, 1988, as amended in 1995 (hereinafter called the "Regulations") contending that the said Regulations are illegal, arbitrary and violative of Article 14 of the Constitution. Regulation 9.03 defining specified load as power applied for or the assessed load whichever is higher is arbitrary and causes undue hardship to Consumers even though their requirement is less than the assessed load. It is averred that the assessed load is calculated under Regulation 9.02 for commercial, and for other types of installations at 75 Watts per square metre for plinth area of the sanctioned plan and in respect of domestic installation at 50 watts per square metre on the above said area. In the cases on hand, the assessed load would come to 71.034 K.Ws., though requirement of the Consumers is only 9.32 KWs., and specified load would be 71.034 KWs. and the Consumers are required to pay charges at Rs. 5,000/- per K.W. The difference amount would be highly exorbitant and arbitrary and there is no nexus between the object of the Regulations and the act in calling upon Consumers to pay as per the assessed load. Collection of service charges on the assessed load is also highly unreasonable and arbitrary and hence, violative of Article 14 of the Constitution. It is also averred in the writ petition that even if the Consumers were to install a transformer, installation has to be done in proportion to the quantity of assessed load which would put the Consumers to undue expenses, and the separate classification of Consumers requiring more than 10 connections from others, is arbitrary and there is no nexus to the object sought to be achieved and hence, provisions of Regulations 9, 9.01, 9.03, 9.04 and 9.05 of the Regulations, are unconstitutional and liable to

be quashed. The Regulations were further amended by notification dated 4-11-1998 and the writ petition was amended to challenge the above said Regulations as amended contending that their provisions are arbitrary and violative of Article 14 of the Constitution and ultra vires the powers of the Board under Sections 49 and 79(j) of the Electricity (Supply) Act, 1948 (hereinafter called the "Supply Act") and Rule 27 of the Indian Electricity Rules and Annexure-VI to the Rules.

3. The respondent-Board has filed statement of objections denying the facts as alleged. Additional objections were filed after the amendment of the writ petition. It is stated that Regulations have been framed in exercise of the power under Sections 49 and 79(j) of the Supply Act and they have statutory power. Regulation 9 is applicable only to commercial complex(es) or residential complexes, apartments, requiring specified load of 25 K.W./10 or more connections under one premises or multistoried building/s having 4 or more floors including cellar floor. Petitioners have distorted true facts. Regulations were framed during 1984-85, when the cost of transformer for 250 K.Ws. was only Rs. 25,510/- and had fixed the sum of Rs. 750/- per K.W. or part thereof. Since then, there is increase and escalation in the prices of the material and transformers as also cable. Service charges were increased from Rs. 750/- per K.W. to Rs. 2,500/- per K.W. by amending Regulations with effect from 7-4-1994. There has been further escalation in the price of transformer and other materials and the Board is also experiencing difficulty in providing place for installing transformer to cater to the need of multistoried buildings and in providing infrastructure required to supply power. Hence, the Board further amended Regulations in 1995. As per the amendment, the building owners are required to provide infrastructure and deposit 20% as supervision charges on the estimate prepared on the total cost. The assessed power requirement of Consumers was 56.25 KWs. and assessed load 6.72 KWs. was sanctioned for 28 installations and 28 installations were serviced during 1995. The Consumers applied for arranging additional power supply to 13 numbers. The plinth area as per modified plan would come to 1073.925 sq. metres. As per the amended Regulations, assessed power will be 17 KWs. The Consumers would be required to pay Rs. 3.55 lakhs. However, by a communication it was informed that the matter is pending consideration. Considering the extent of work and escalation in the prices of all accessories, 20% service charge is levied. The Board has worked out the extent of service charges/augmentation charges payable at Rs. 7,500/- per K.W. in Bangalore, in view of the underground cable system and at Rs. 5,000/- per K.W. in other places in view of overhead system, having regard to cost of materials used. The details of expenditure is enumerated in the additional statement of objections. It is also stated that the assessed power is worked out on the basis of Power Engineers' Handbook at 75 Watts/Sq. metre for commercial and at 50 Watts/Sq. metre for residential accommodation, the relevant extract of which is produced at Annexure-RII.

4. The learned Single Judge after hearing the contentions of the learned

Counsels appearing for the parties, framed the following points for his determination in the order dated 19-1-2001:

"1. Whether the amended Regulation 9 of 1995 and 1998 are beyond the powers conferred upon the KPTCL, under the provisions of Section 94 read with Section 79(j) and (k) of the Electricity (Supply) Act, 1948?

2. Whether the impugned Regulation is imguided, arbitrary and unreasonable in demanding the applicants/Consumers for payment of infrastructure developmental charges and other deposits upon the specified load of power supply by the KPTCL, to the commercial/residential/multistoried buildings, which falls within the Regulation 9(a), (b), (c) and (d) of the ESR Regulations, 1988?

3. Whether the owners/promoters/occupants occupying the buildings/complexes by registering the applications for supply of power with the KPTCL, in the prescribed manner along with the documents required to be produced under Regulation 9.01 are required to obtain sanction of power to such buildings compulsorily by them above and the owner/occupants of either the commercial shop or residential apartments are disentitled for applying for power supply in the prescribed form of their respective shops/apartments and whether the Board has got the power on the basis of the requisitioned load, supply of such power, by giving installation to petitioners is either LT or HT and require to pay appropriate tariff under the respective category of tariffs rates that would be determined by the KPTCL?"

5. The learned Single Judge after considering the relevant provisions of the Electricity Act, the Supply Act and Regulations and decisions of the Apex Court, in detail answered Points 1 and 2 in the negative against petitioners and Point 3 in favour of petitioners and passed the following order:-

"15. The writ petitions are allowed in part as indicated in the penultimate paragraph. The amendment to Regulation 9 of 1995 and 1998 are held constitutionally valid and therefore, the same need not be struck down as prayed for by the petitioners. The petitioners are entitled to requisite load for their new buildings, either commercial complex or residential apartments which are assessed on the basis of the actual construction of the building or as per the sanctioned plan, whichever is higher, only for the purpose of payment of infrastructure charges and supply of power either in the name of the owner or the lessee or the occupier as indicated in the penultimate paragraph of this judgment, Having regard to the facts of these petitions, no costs are awarded".

6. The Board has preferred W.A. Nos. 1301 and 3261 to 3277 of 2001 being aggrieved by the finding given in favour of the writ petitioners on Point 3 as formulated in the order of the learned Single Judge. The other appeals are filed by writ petitioners-Consumers being aggrieved by the finding on Points 1 and 2 formulated by the learned Single Judge and answered against them.

7. Sri S.M. Chandrashekhar, Advocate for the appellants-Consumers, submitted

that the learned Single Judge was not justified in upholding the vires and validity of the Regulations impugned in the writ petitions and submitted that even if the requirement of the Consumer is limited, he is bound to meet the requirement of the Board as per assessed load which is clearly arbitrary and unjustified and classification has no nexus to the object sought to be achieved and this would put the Consumers to great hardship. He further submitted that it is the duty of the Board to install transformer and requiring the owner to install it and hand it over to the Board or in the alternative to make payment at Rs. 5,000/- per K.W. in places other than Bangalore and at Rs. 7,500/- per K.W., in Bangalore, is arbitrary, unreasonable and baseless and requirement for payment of 20% service charges to the Board is also arbitrary and violative of Article 14 of the Constitution and finding on Point 3 formulated by learned Single Judge is entitled to be confirmed.

8. Sri M. Shivappa, reiterated the arguments of Sri Chandrashekar and further submitted that requirement of the Regulations regarding deposit of service charges, installation of transformers by the consumer and payment on the basis of assessed load is clearly ultra vires the provisions of Section 49 of the Supply Act and Clause VI of Schedule to Electricity Act. He further submitted that classification to apply Regulation 9 is arbitrary as owner of single premises though using higher power is not subject to conditions impugned in Regulation 9 and there is no nexus between the classification made and the object sought to be achieved. He has further submitted that the findings recorded by the learned Single Judge on Points 1 and 2 formulated in the impugned order are liable to be set aside by allowing the writ petitions in their entirety.

9. Sri N.K Gupta, the learned Counsel appearing for the respondent-Board, submitted that the vires and validity of Section 49 and the Regulations have been upheld and the amendment of the Regulations which is only applicable to bulk Consumers is justified having regard to escalation in the price of transformer and the accessories, and establishment charges of the Board, the imposition of service charges at 20% is ready upheld by this Court and the Board has imposed reasonable conditions thought fit by it for supply of electricity and no ground is made out to interfere with the order of the learned Single Judge on Points 1 and 2 as formulated in the order and finding on Point 3 is liable to be set aside and the writ petitions ought to have been dismissed in their entirety and the condition to take connection through single meter is also reasonable and justified.

10. We have heard the learned Counsels appearing for the writ petitioners-Consumers and the learned Counsels appearing for the Board and having regard to the contentions urged, the point that arises for determination in these appeals is.-

Whether the finding of the learned Single Judge on the points formulated in the impugned order calls for interference in these appeals?

11. It is seen that the law relating to electricity is principally contained in the

following enactments.-

1. The Indian Electricity Act, 1910, which provides for grant of licences in relation to supply of electricity and the projects of undertaking and also provides for supply of electricity including the protective clauses.

2. The Electricity (Supply) Act, 1948, which provides for constitution of State Electricity Boards.

12. It is well-settled that the principle enunciated in Article 14 does not take away from the Board the power of classifying the persons for legitimate purposes. While making such classification it should be borne in mind that the classification must be reasonable and just in relation to the object sought to be attained. In any case, the classification cannot be made arbitrarily and without any substantial basis. According to Article 14 of the Constitution, persons who are similarly placed are to be treated alike both in privileges conferred and liability imposed.

13. It is seen that the respondent-Board has been constituted u/s 5 of the Supply Act. Section 18 of the Supply Act lays down the general duties of the Board. Section 2(6) of the Supply Act excludes the Board from the definition of licensee. Section 26 of the Supply Act, enjoins upon the Board all the powers and obligation of the licensee. However, application of Sections 3 to 11, 21(2) and (3), 22, 22-A, 23 and 27 as also Clauses I to V, VII, IX to XI of the Schedule to the Electricity Act. The second proviso to the section states that the provisions of Clause (vi) of the Schedule to the Electricity Act, apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. Section 49 of the Supply Act reads as follows.-

"Section 49. Provision for the sale of electricity by the Board to persons other than licensees.--(1) Subject to the provisions of this Act and/or Regulations, if any made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely.-

(a) the nature of the supply and the purposes for which it is required;

(b) the coordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed

areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person".

In its application to the State of Karnataka, after Sub-section (4) of Section 49, the following sub-section has been inserted:

"(5) The party to an agreement or any other arrangement entered into prior to the commencement of the Electricity (Supply) (Karnataka Amendment) Act, 1981 and providing for supply of electricity by the Board shall, notwithstanding anything contained in the instrument of agreement or other arrangement or in any law including this Act, in force at such commencement, pay, in respect of electricity so supplied after such commencement, price (by whatever name called) calculated in accordance with the uniform tariff framed or modified from time to time, under Sub-section (1) and applicable to the category to which such party belongs".

Section 70 of the Supply Act reads as follows.-

"70. Effect of other laws.--(1) No provision of the Indian Electricity Act, 1910 (9 of 1910), or of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect:

Provided that nothing in this Act shall be deemed to prevent the State Government from granting, after consultation with the Board, a licence not inconsistent with the provisions of the Indian Electricity Act, 1910 (9 of 1910), to any person in respect of such area and on such terms and conditions as the State Government may think fit.

(2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Indian Electricity Act, 1910 (9 of 1910)".

Section 79 of the Supply Act empowers the Board by notification in the Official Gazette, to make Regulations not inconsistent with this Act and Rules, and Clause (j) pertains to principles governing the supply of electricity by the Board to persons other than licensees.

14. In the instant case, certain provisions of the Regulations have been challenged on the ground that they are violative of Article 14 of the Constitution and ultra vires the power conferred on the Board under Sections 49 and 79(j) of the Supply Act. It is not in dispute that the respondent-Board, in exercise of power under the said sections, has framed Regulations with certain terms and

conditions, and procedure with regard to supply of power, which is within its competence.

15. The vires and validity of provisions of Section 49 and power to frame Regulations have been upheld by the Supreme Court and it has been laid down that the Board has power to supply electricity upon such terms and conditions as it reasonably thinks fit and regulation can be unilaterally amended by the Board (vide Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, ; Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, and Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, .

16. In view of the provisions of Electricity Act, the Supply Act and Rules framed thereunder, the Supreme Court has held in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, that the Board has been conferred statutory power u/s 49(1) of the Supply Act to determine the terms and conditions on the basis of which supply is to be made and the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit and the terms and conditions as notified in Regulations are statutory in character and they can be invalidated only if they are in conflict with any provisions of the Act or Constitution.

17. Before considering the respective arguments, it will be appropriate to extract the relevant provisions of Regulation 9 of the Regulations as amended in 1995, with effect from 6-10-1995 and 4-11-1998:

Regulation 9.00. As existing (Amended in 1995)

As amended with effect from 4-11-1998

Applicable to commercial complex(es) or residential complex(es)/ apartments requiring specified load of 25 KW/10 or more connections in one premises of multistoried building(s) having four or more floors including cellar floor

Applicable to commercial/residential building(s) complex(es) which fulfill(s)/one or more of the following conditions. --

(a) Specified load of 25 KWs. or more calculated as per Regulation 9.03 below

(b) 10 or more electrical connections in one premises

(c) Four or more floors including cellar floor

(d) Note.-- This Regulation 9.00 is not applicable for Educational Institutions, Government Hospitals, Government Guest Houses, Hospitals run by charitable institutions, and bona fide hostels, multistoried buildings of slum dwellers

9.01. xxx xxx

9.02. On receipt of application, the Sub-Divisional Officer will assess the requirement of load as detailed below. --

9.02. Assessed load.-- On registration of the application, KEB will assess the load of the building/complex as detailed below:

(a) For domestic installation: At 50 Watts per square metre of the plinth area of the sanctioned plan limited to 3 KWs per AEH installation or on actuals when restrictions on AEH is relaxed

(a) For commercial type of installations: At 75 Watts per square metre for the entire building area for all the floors as per plan or as actually constructed whichever is higher

(b) For commercial and other type of installations:

(b) For domestic type of installations:

At 75 Watts per square metre of the plinth area of the sanctioned plan

At 50 Watts per square metre for the entire building area for all the floors as per plan or as actually constructed whichever is higher

Note. -- In case of both types of installations are in the same premises, the wattage requirement shall be assessed separately and added

Note. -- (1) In case, both types of installations are in the same premises, the wattage requirement shall be assessed separately and added

(2) For car parking area, external staircase area and balcony area 50% of the above values shall be taken for calculating the assessed load

(3) Water tank area and chajja projection area, where power is not required shall not be considered for calculating the assessed load

9.03. Specified Load.-- The specified load of the premises for the above purpose shall be. --

9.03. Specified Load.-- Specified load of the building/ complex shall be.--

(a) In case of new constructions, the power applied by the Consumer or the assessed load, whichever is higher

(a) In case of new buildings: Assessed load calculated as per Electricity Supply Regulation 9.02 or the requisitioned load whichever is higher

(b) In case of existing building(s) which is already having power supply and coming under the purview of this regulation, when additional/fresh power supply is applied for, either to the existing building or addition to the existing building, the existing sanctioned load or the assessed load of the existing building including that required for the new extension as detailed in Regulation 9.02 above, whichever is higher

b. In case of old buildings with existing power: Assessed load calculated as per ESR 9.02 for the entire building or the sum of existing load and additional

requisitioned load, whichever is higher

Note. -- (1) The requisitioned load in case of AEH installation shall be computed on the basis of 3 KWs per installation/per flat or on actuals when restriction on AEH connection is relaxed. This will also apply to the installation availing power supply on HT basis

Note. -- In case the sanctioned plan indicates two or more buildings in the same premises, they shall be clubbed together to assess the specified load

(2) In case the sanctioned plan indicates two or more multistoried buildings in the same premises, they shall be clubbed, together to assess the specified load

(3) This regulation shall not apply in case of residential complexes) or commercial complex(es) requiring specified load of 25 KWs. or less than 10 connections

9.04. 1. In new buildings coming under this regulation where the specified load is more than 75 KWs., the applicant shall avail HT power supply by installing his own transformer and follow the prescribed procedure under HT power supply

9.04. New Buildings.-- (1) In case of new buildings/ complexes if the assessed load of the buildings/complex(es) exceeds 100 KWs. or the requisitioned load exceeds 75 KWs., the applicant shall avail HT supply for the building/complex by following the procedure as per ESR 8.00

2. However if the power supply is for purely residential purposes and the specified load is more than 75 KWs., the applicant if he so desires may avail LT power supply for such residential complex(es)/apartment(s) subject to compliance of provisions made hereunder

Note. -- In case of residential apartments/complex, LT power supply to individual houses can be arranged at the request of the applicant subject to observing of all other conditions as per provisions of Electricity Supply Regulation 9.04(2) below

3. Where the specified load is 25 KWs. and above but not more than 75 KWs., power supply will be arranged of provisions made hereunder. The following provisions apply for availing LT power supply vide items 2 and 3 above. --

(2) In case of new buildings/complexes if the specified load is 25 KWs. or more but less than 100 KWs., the applicant has to fulfill the following provisions to avail power supply. --

(a) The applicant/promoter will have to carry out the work of laying HT/LT cable erection of transformer. Switch-gear including service cables from nearest distribution main or transformer erected in the premises of the applicant as the case may be upto the metering point

(a) The applicant shall execute the work of infrastructure such as laying of HT/LT cable, erection of transformer center, switchgear/ RMU/GOS, etc., as per estimate prepared by KEB. This work shall be got done through Class I licensed

Electrical Contractor on self-execution basis duly paying supervision charges at the rates as notified by the Board from time to time.

(b) The work shall be carried out by the applicant at his cost through Class I Licensed Electrical Contractor as per the estimate prepared by the Board and under the supervision of the Board

(b) The specified load of the buildings/complexes shall decide the total capacity of distribution transformers to be erected by the applicant and shall be to the standard rating approved by the Board

(c) The applicant shall pay supervision charges at 20% of the cost of the estimate to the Board

Note. -- The Board can collect the cost of such transformer from the applicant and provide higher capacity transformer if found necessary to cater to other loads in the area

(d) The specified load of the premises shall decide the capacity of distribution transformer and shall be to the nearest standard rating as per ISL The Board will collect the cost of this transformer from the applicant and provide higher capacity transformer if it is found that the area need a higher capacity transformer

(c) The applicant shall provide space in his premises for erection of transformers, switchgear and other allied equipment. The space so provided shall have direct access from public road

(e) The applicant shall provide space in his premises for the installation of transformer, switchgear and other allied equipment. The space so provided shall have direct access from public road and shall be reserved. The Board reserves the right to utilise space as and when necessity arises

(d) After completion of the works, the entire distribution lines along with transformer will be taken over by the Board. Thereafter, the ownership of the lines and other allied equipments lies with the Board for future maintenance and supply of power. The Board reserves the right to extend supply to other applicants from the same distribution system.

(f) After completion of the works, the entire distribution lines along with transformer will be taken over by the Board. Thereafter, the ownership of the lines and other allied equipments lies with the Board for future maintenance and supply of power. The Board reserves the right to extend supply to other applicants from the same distribution system

(e) The applicant shall arrange for laying of service cable of reputed make and adequate size as prescribed by the Board to meet the specified load from the nearest distribution main or the transformer in his premises as the case may be at his cost upto the metering point

(g) The applicant shall arrange for laying of service cable of adequate size from

the nearest distribution main or the transformer in his premises as the case may be at his cost upto the metering point

(f) To have alternate source of supply two cables are to be provided by the applicant. The arrangement shall be as follows. --

(h) The service cable shall be of reputed make, adequate size and capacity to meet the specified load. To have alternate source of supply two cables are to be provided by the applicant

- * Two runs of cables for alternate supply

- * Then change over switch at the end of the two supply cables

- * Then master metering cubicle/ bulk metre

- * Then ELR-MCCB

- * LT Bus bar

(i) The supply to all the installations of the complex will be through common service cable only

Note. -- All the equipments shall be suitable for sealing from KEB to prevent theft/misuse

(j) Suitable and easily accessible space shall be provided at the ground floor/ cellar floor for housing the Board's metering equipment- Separate circuit for each installation shall be laid and terminated at the common point of supply. The panel Board and Bus Bar arrangements shall be as approved by the Board which shall be provided by the applicant/consumer at his cost. Metering will be separate for each installation

(g) Supply to all the installations of the building will be through common service main cable only

(h) Suitable and easily accessible space near the main entrance shall be provided at the ground floor/cellar floor for housing the Board's metering equipment. Separate circuit for each installation shall be laid and terminated at the common point of supply. The panel Board and Bus Bar arrangements shall be as approved by the Board which shall be arranged by the applicant/consumer at his cost

(k) At the end of the service line and before the metering cubicle where individual metering equipment is installed, a circuit breaker of adequate capacity shall be installed which shall be activated by a sensitive earth fault relay/earth leakage sensing device. However, such circuit breaker/protective device may be installed for the individual circuits by the consumer to have better selectivity

(i) Metering panel shall be arranged as directed by KEB Officer (Sanctioning Authority). They shall be at one place and easily accessible and at a height of 0.6 metre to 1.6 metres above ground level for energy metering. ELCB to all

installations shall be fixed as per ESR 9.04

(l) The materials used shall conform to Board's standard specification/ISI make. The applicant shall produce proof, for having purchased the materials including transformer before executing the work, to the Board for verification

(j) MCCB and ELCB to be installed for the individual circuits by the consumer to have better selectivity. ELCB mentioned above shall be installed at the entrance of individual premises

(m) Manufacturers Test Report for the transformer and switchgear installed shall be furnished by the applicant to the Board

(k) The materials used shall conform to Board's standard specification/ ISI make. The applicant shall enclose documents of proof for having purchased the materials including transformer before executing the work, to the Board for verification along with the C.R.

(n) Guarantee shall be furnished by the applicant for a period of not less than one year for all the materials used in the work from the date of availing power supply

(o) Any other conditions as deemed fit depending upon the requirement of individual cases may be imposed by the jurisdictional Zonal Chief Engineer (Elect.)

(1) Manufacturers Test Report for the transformer and switchgear installed as in (k) above, shall be furnished by the applicant to the Board

4. However in respect of commercial and residential complex(es)/apartment(s) where the number of connections is 10 or more but the specified load is less than 25 KWs., the applicant shall comply only with the provisions made under Regulation 9.04(g) to

(m) Guarantee shall be furnished by the applicant for a period of not less than one year for all the materials used in the work from the date of availing power supply

(n) Power supply shall be arranged for the requisitioned load and necessary deposits to be collected based on requisitioned load only

(k) in addition to observing the other provisions of ESR

(o) Any other requirement as stipulated by Board

(3) However in respect of buildings coming under the purview of ESR 9.00 but with specified load less than 25 KWs., the applicant shall comply with provisions (e), (g), (h), (i) and (j) above only in addition to observing other provisions of Supply Regulations.

Provision (f) above is optional

9.05. (1) Whenever additional power supply is to be sanctioned to a residential

complex(es) or commercial complex(es) already having LT power supply either due to addition to the building or due to requisitioning additional load, the following provisions shall be complied:

9.05. Old buildings.-- In the case of existing building/complex to avail additional power supply the applicant shall fulfill the following provisions. --

(a) The applicant has to avail HT power supply duly observing the procedure prescribed under HT power supply, if the specified load for the entire building including the addition to the building exceeds 75 KWs. or the existing sanctioned load plus additional requisitioned load exceeds 7 KWs.

(1)(a) In the case of building serviced prior to 6-10-1995 and without additional built area: --If the specified load calculated as per ESR 9.03(b) above is 25 KWs. or more, augmentation charges for the additional load requisitioned shall be collected as notified by the Board from time to time

(b) If the specified load for the entire building including the addition to the building or the existing sanctioned load plus additional requisitioned load does not exceed 75 KWs., the applicant is permitted to avail LT power supply subject to observance of provisions of Regulation 9.04

(b) In the case of building serviced prior to 6-10-1995 and without additional built area. -- If the specified load calculated as per Regulation 9.03(b) above is 25 KWs. or more than all provisions as per ESR 9.04(2) shall be complied with

(c) However, in the case of (1) purely residential complex(es)/ apartment(s) and (2) all other installations serviced before 6-10-1995, where additional load is required, the same shall be sanctioned under LT power supply even though the above said load exceeds 75 KWs. subject to observance of provisions of Regulation 9.04

Note. -- Applicable to both (a) and (b) above). -- If the requisitioned load including existing load exceeds 100 KWs., the applicant shall avail HT supply duly following the procedures as per ESR 8.00

(c) In the case of existing buildings serviced after 6-10-1995 provisions as per ESR 9.04: shall be complied with

(2) The following additional provisions shall apply for sanctioning additional power supply to the existing installations:

(d) In case of existing building demolished and reconstructed, provisions as per ESR 9.04 above shall be complied with existing R.R.

(a) The consumer shall have to lay new service main cables of adequate size so as to meet the specified/assessed load

Nos. of this building are to be cancelled

(2) The following additional provisions shall apply for sanctioning additional

power supply to the existing installation (wherever applicable):

(b) Separate additional service main cable is not permitted to be laid to meet the additional load

(c) The Board at its discretion may however permit additional load to be serviced on any one of the existing cables provided the cables have got adequate capacity and if not the existing service main cable shall be got replaced by higher capacity cables to meet the additional load by the applicant at his cost

(a) The applicant shall have to lay new service main cables of adequate size to meet the load requirements

(d) The jurisdictional Superintending Engineer (Elect.), O and M Circle, may permit the new installations to be serviced without insisting on providing a new metering panel and shifting of all metres to new panel and etc., as per Regulation 9.04(j). However, the metre so provided shall be easily accessible to Board's staff and shall be at a minimum height of 0.6 metre above the ground level and not at more than 1.6 metres above the ground level to facilitate easy metre reading. The consumer shall however, provide ELCB to these new installations as required under Regulation 9.04(k)

(e) Where the requisition for additional load to the existing building and fresh power sanction to additional construction, the provisions noted above shall be applied separately and followed

Note. -- (a) The requisitioned load, in case of AEH installations shall be computed on the basis of 3 KWs per installation or on actuals when restrictions on AEH connection is relaxed

(b) The augmentation charges at Rs. 2,500/- per KW in excess of the existing sanctioned load shall be payable by the consumer towards the system already built by the Board, if LT supply is arranged with the existing Board distribution system and no modifications are required

18. We have given anxious consideration to the contentions of the parties, scrutinized the provisions of the regulation, and perused the order of the learned Single Judge.

19. A perusal of the above provisions reveals that the Board has been conferred statutory power u/s 49(1) of the Supply Act and Board can supply power to any person upon such terms and conditions as it thinks fit and the provisions have also been upheld, which is not disputed. Further, perusal of the above provisions, makes it clear that Regulation 9 is applicable only to commercial/residential building(s), complex(es) which fulfil one or more of the following conditions (as amended in 1998):

a. Specified load of 25 KWs or more calculated as per Regulation 9.03;

b. 10 or more electrical connections in one premises; c. four or more floors

including cellar floor.

20. The above Regulation is not applicable for Educational Institutions, Government Hospitals, Government Guest Houses, Hospitals, Buildings of Slum Dwellers.

21. Regulation 9 as it stood after amendment in 1995 with effect from 6-10-1995 and prior to amendment with effect from 4-11-1998, was applicable to commercial/residential complex(es), apartments requiring specified load of 25 KWs./10 or more connections in one premises or multistoried building having four or more floors including cellar floor.

22. The provisions of the Regulations would show that there is a specific classification of Consumers who would fall within the ambit of Regulation 9. The contention of Sri Shivappa that in respect of a single premises even if consumption is more than 25 KWs. it would not be covered by Regulation 9 and premises on a small plot with four floors, would attract Regulation 9, is unfounded as classification is specific. Even a premises built on a large area where requirement is 25 KWs., as calculated under Regulation 9.03, would attract the provisions of the Regulations. Therefore, the contention that classification is arbitrary, cannot be accepted. The contention of the Consumers that Regulation 9 is violative of Section 22 of the Electricity Act, cannot be accepted as Section 22 of the Electricity Act is not applicable to the respondent-Board in view of provisions of Section 26 of the Supply Act referred to above and it is not substantiated as to how provisions of Clause VI of the Schedule to the Electricity Act are violated as there is no averment that Distribution line with sufficient capacity to supply bulk power is already laid and further provisions of Clause VI can be made applicable with such modification as is necessary by the Board in view of the provisions of Rule 27 of the Electricity Rules and Section 70 of the Supply Act. The contention of the learned Counsel for the Consumers that Regulation 9 violates provisions of Rule 58 of the Electricity Rules cannot also be accepted as the same is subject to Rule 50 regarding point of commencement of supply and Rules 50-A and 51 lay down the obligations imposed upon users of energy in multistoried buildings with a height of more than 15 metres and medium, high or extra high voltage installations. The learned Counsel has not been able to show any inconsistency or conflict between the provisions of the Act and the Regulations. Nor it can be said that the classification is unreasonable so as to violate Articles 14 and 19 of the Constitution.

23. The other grievance of the Consumers is that computation of assessed load and specified load as per Regulations 9.02 and 9.03 and conditions imposed therein regarding installation of transformer and payment of service charges, are arbitrary and untenable and hence, violative of Article 14 of the Constitution. In order to succeed in substantiating the said contention, it has to be shown that the classification of Consumers to whom Regulations apply is not valid and has no nexus to the object sought to be achieved. We have already stated that classification is specific and is applicable only to the Consumers mentioned in

Regulation 9. It is clear from the averment made in the objection statement filed by the Board that amendment of the Regulations became necessary due to the steep increase and escalation in the cost of providing infrastructure, transformer, other requirements and accessories and maintenance charges. This Court cannot go into the fact-situation, but as stated by the Board, it is also experiencing difficulties in providing place for establishing transformer, to cater to the need of bulk Consumers requiring more than 10 connections with assessed load of more than 25 KWs. It has also been the experience of the Board that requisition for supply of requisite energy at minimum quantity is sought for by builders, promoters and owners. Thereafter, tenements are leased, sold or alienated and the occupants of tenements ask for additional load, The Board would not be able to supply additional energy without proper reinforcement of infrastructure and other works. Therefore, having regard to the normal requirement of electricity for a premises and strictly on the basis of the Handbook of Power Engineers, assessed load is fixed at 75 Watts per square metre in respect of non-residential and 50 Watts per square metres in respect of residential buildings and details of calculation have been enumerated in Annexure-RII to the objection statement. The learned Counsel for the Consumers has not been able to show that the said calculation is wrong and therefore, under the circumstances, fixation of quantum of assessed load and calculation of specified load, in the absence of any material, cannot be said to be arbitrary or baseless. The Board has also furnished particulars of expenditure involved while supplying energy to Consumers as detailed in the objection statement and the manner in which the extent of service charges/augmentation charges are made payable at Rs. 7,500/- per K.W. in Bangalore, in view of the underground cabling and Rs. 5,000/- per K.W. in other places in view of the overhead system having regard to cost of material used. The said calculation, as stated, has not been shown to be wrong or arbitrary by Consumers. On the other hand, the facts reveal that it would be cheaper for Consumers to install transformer and pay 20% service charges to the Board because the facts averred in W.P. No. 24526 of 1996, would show that service charges/augmentation charges comes to Rs. 3.55 lakhs while the cost of transformer would come to Rs. 2,00,000/-.

24. The contention of the learned Counsel appearing for the Consumers that imposing of 20% service charges is exorbitant and arbitrary has no merit. As seen from the above Regulation the said charge has been fixed having regard to the work to be done by the Board and fact that the transformer installed has to be maintained in future by the Board. The supervision work may involve various aspects. Estimate is prepared by the Board; specialized knowledge of the Board officials has to be utilized for supervision of works; work of electrical contractors has to be supervised to ensure that proper material is used to avoid hazard of electric shock to inmates of premises; specification of transformers has to be prescribed and after completion of the work, the entire distribution line along with transformers has to be taken over by the Board for future maintenance. Having regard to the nature and extent of the work involved and future

maintenance, imposition of 20% service charges, cannot be said to be excessive or arbitrary as to violate Article 14 of the Constitution or any of the provisions of Electricity or the Supply Act or Rules.

25. It is also to be noted that the purpose of calculating assessed and specified loads under Regulations 9.02 and 9.03 is only for providing infrastructure like installation of Transformer and other equipments. For the purpose of supply and necessary deposits only, requisitioned load, is taken into account. Clause (n) of Regulation 9.04 clearly states that power supply shall be arranged for requisitioned load and necessary deposits shall be collected on requisitioned load only. Hence, the contention of the learned Counsel for the Consumers that supply, charge and deposit will be on assessed load is baseless and cannot be accepted.

26. There is also no merit in the contention of the learned Counsel for the Consumers that imposition of minimum charges for supply of electricity, is illegal as a similar contention has been rejected by the Supreme Court in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, and in State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others, and the Supreme Court has upheld imposition of minimum charges.

27. Considering the respective arguments in the facts of the present case and applying the settled law, we find that the learned Counsel for the Consumers has not been able to show any inconsistency between the provisions of the said Regulations and the provisions of the Supply Act. In view of the above said reasoning, it is clear that the Consumers have failed to prove that provisions of Regulation 9 challenged in the writ petitions insofar as it relates to provisions regarding calculation of specified and assessed load, for providing of infrastructure for supply of power, imposition of service charges and other conditions including installation of transformer by Consumers covered by Regulation 9, is violative of any provisions of Act or the Constitution. Hence, we hold that the finding of the learned Single Judge on Points 1 and 2 formulated in his order, is justified and does not suffer from any error or illegality, so as to call for interference in appeals filed by Consumers/writ petitioners.

28. Now, we shall take up the appeals filed by the Board against the common order of the learned Single Judge dated 19-1-2001. The Board is aggrieved by the finding of the learned Single Judge on the Point 3 formulated in his order, The learned Counsel for the Board, Sri N.K. Gupta, submitted that when the learned Single Judge has held that the Regulations are valid and the Board is entitled to impose terms and conditions thought fit for supply of energy, he could not have held Point 3 against the Board and in favour of the Consumers, and therefore, he submits that the finding is contradictory and liable to be set aside.

29. It is well-settled that the Board is entitled to impose such terms and conditions, as it thinks fit for supply of energy to Consumers. However, such conditions and terms should be reasonable and must relate to the object and

purpose for which they are issued and power cannot be exercised for a collateral purpose. Regulation 9.04(2)(n) of the Regulations clearly provides that power supply shall be arranged for the requisitioned load and necessary deposits be collected based on the requisitioned load only. The object of imposing conditions for providing proper infrastructure and its maintenance is for the convenience of persons who would occupy the premises. It is seen that in one premises having number of Consumers, if a consumer who consumes electricity and pays his bill, on account non-payment of electricity bills by other Consumers, if power supply to the consumer who has already paid the bill, is disconnected, he will certainly be prejudiced in his right even though he is not at fault. In view of this, the argument that the learned Single Judge considered the Consumers of multistoried building as one group but for other aspects he has treated them as individuals, is not acceptable. Under the circumstances, if the Board is to provide separate metres at the cost of the Consumers, it cannot be said to be wrong and the finding of the learned Single Judge cannot be said to be contradictory as alleged. Considering this aspect we see that the condition imposed by Regulation 9.4(2)(i) and (j), Regulation 9.7(i) and Regulation 9.08, which provide for supply of power to all the installations of the building through common meter, has no nexus to the object sought to be achieved to that extent. The learned Single Judge by a detailed order has held that the imposition of the said condition is contrary to the Supply Act and violative of Article 14 of the Constitution, having regard to the fact that the acceptance of the contention of the Board that the entire complex as a unit, would lead to anomalous results and runs contrary to the fundamental right of occupants of each tenement in the complex(es). In our view, neither we find any substance in the argument of the Board nor is the finding contradictory, as alleged. In any view of the matter, we do not find any error or illegality in the finding of the learned Single Judge on Point 3.

30. As discussed above and in view of the detailed order of the learned Single Judge, the writ appeals filed by the Consumers are dismissed. The appeals filed by the Board also fail.

In view of the above discussion, the writ appeal filed by the Consumers and the Board are dismissed accordingly with no order as to costs.