

(1989) 11 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 2568 of 1989

Banhatti Co-operative Spinning Mill Ltd.	APPELLANT
Vs	
Karnataka Electricity Board	RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Electricity (Supply) Act, 1948 — Section 60 A
Limitation Act, 1963 — Section 14, 15

Citation : (1990) ILR (Kar) 3518

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; S.G. Sundaraswamy, for N.K. Gupta, for the Respondent

Judgement

K.A. Swami, J.—In this petition under Article 226 of the Constitution, the petitioner has sought for quashing the Bill dated 21-1-1989 bearing No. BNHT 2 issued by the second respondent produced as Annexure-J. It has also sought for issue of a Writ in the nature of Mandamus directing the respondents not to recover the amount of Rs. 91,02,646-40p. from the petitioner as demanded under the aforesaid Bill Annexure-J.

2. The petitioner is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. It is a Co-operative Spinning Mill situated at Banahatti, Jamkhandi Taluk, Bijapur District.

3. Having regard to the contentions urged on both sides, the following points arise for consideration:

(i) Whether the provisions of the Limitation Act, 1963 are applicable to the demand made by the K.E.B. under the Bill dated 21-1-1989 produced as Annexure-J?

(ii) If the provisions of the Limitation Act, 1963 are applicable, whether Article 14 or Article 15 of the Limitation Act is applicable to the demand in question?

(iii) Whether the demand is valid in law? POINT NOS. (i) and (ii)

4. The contention of the petitioner is that the provisions of the Limitation Act are applicable because the electrical energy falls within the definition of "goods" and therefore, no sooner the energy is consumed, the charges for the same become payable. The Limitation prescribes periods of limitation for filing suits, appeals and applications before Court and not for taking action by the Authority such as Karnataka Electricity Board (for short "KEB"), through its own machinery and not with the aid of the Court for recovering the amount due to it otherwise than by a suit filed in a Court. In other words, the Limitation Act primarily applies to suits instituted, appeals preferred and applications made before a Court of Law. If suits, appeals and applications are instituted, preferred and made, before a Court of Law after the period prescribed, they are liable to be dismissed although limitation has not been set up as a defence. Section 60A of the Electricity (Supply) Act, 1948 (hereinafter referred to as the "Act") also has no application to the present case because that Section deals with the case where the right to recover any amount due to the State Government for or in connection with the consumption of electricity is vested in the Board. The amount due from the petitioner which is sought to be recovered by the Board is not the amount due to the State Government. Hence Section 60A of the Act is not applicable to the case on hand.

5. In addition to this, It is stated that the Karnataka Electricity Board was constituted in the year 1957 before the coming into force of the Electricity (Supply) (Amendment) Act, 1966. But the bill that is issued does not relate to the period prior to 1966. It also does not represent the amount due to State Government. Therefore, even on this ground Section 60A of the Act has no application to the case on hand. No provision in the Limitation Act 1963 is brought to my notice by the learned Counsel for the petitioner which could be made applicable to the demand made by the K.E.B. under Annexure-J, otherwise than by institution of a suit in a Civil Court.

6. However, the learned Counsel for the petitioner has placed reliance on the decisions of the High Courts of Allahabad, Madras and Rajasthan. In Naini Tal Hotel Co. Ltd. Vs. Municipal Board, the case arose out of a regular suit filed by the Board for recovery of the amount. It was held that:

"In the case of electric energy, the consumer is liable to pay according to the consumption shown by the meter and it is for the supplier to make demands accordingly. He cannot be allowed to plead his own mistake or negligence in not making demands within the ordinary period of limitation. The word "goods" is not defined in the Limitation Act,, but according to the definition in the Indian Sale of Goods Act, the word means "every kind of movable property other than actionable claims and money." Electric energy is bought and sold like any other commodity and there can, therefore, be no doubt that it is "property"."

In the above decision it has been held that electrical energy is a "moveable

property" and therefore "goods" within the meaning of Article 52 of the Limitation Act and hence the decree awarded in the case should have been confined to the period of 3 years prior to the institution of the suit. Article 52 of the old Limitation Act is equivalent to Article 14 of the new Limitation Act. As already pointed out, there is no provision in the Limitation Act, 1963 applying its provisions to the authority i.e., K.E.B. to recover the amount due to it otherwise than by way of a suit. In the aforesaid case, the Municipal Board tried to recover the amount from the consumer by filing a suit. The suit is undoubtedly governed by the Limitation Act. Therefore, the licensee viz., the Municipal Board in the case of Naini Tal Hotel Co. Ltd. was required to file a suit within the period prescribed under the Limitation Act. Therefore, the aforesaid decision is not of any assistance for deciding the question as to whether the K.E.B. is entitled to make a demand and recover it otherwise than by way of a suit and whether such an act is still governed by the Limitation Act.

7. Srinivasa Ginning Factory, Srivilliputtur Vs. The Madras State Electricity Board, was also a case which arose out of a suit filed by the Madras State Electricity Board for recovery of the sum due from the Consumer. Therefore, the question as to whether the Limitation Act is applicable to an action taken to recover the amount otherwise than by way of a suit, did not arise for consideration. However, in that case it was held that the electricity was Goods and that the suit by the Board was governed by Article 14 or 15 of the Limitation Act, 1963. Therefore, it is not possible to hold that the aforesaid decision covers the question raised in this Writ Petition.

8. Dalip Singh Vs. Rajasthan State Electricity Board, Jaipur and Others, fell under provisions of the Electricity (Supply) (Amendment) Act, 1966. Therefore, it was held that the limitation prescribed therein was applicable. Thus in the instant case, this decision is also of no assistance to the petitioner. However, the learned Counsel for the petitioner has placed reliance on certain observations made in the decision of the Privy Council in Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 and also of the Supreme Court in New Delhi Municipal Committee Vs. Kalu Ram and Another,

In Hansraj's case, the Privy Council considered the question as to whether an application made by a Liquidator could be construed to be a suit instituted for which the period of limitation was prescribed under Schedule-I of the Limitation Act, 1908. It was held that the word "suit" ordinarily meant, and apart from some context, must be taken to mean, a civil proceeding instituted by the presentation of a plaint. But a claim against a company in liquidation not made by a proceeding instituted by the presentation of a plaint, cannot be considered to be a "suit instituted". On considering Section 3 of the Limitation Act, 1908, and the Explanation thereto, it was held that the application filed by the Liquidator could not be considered as a "suit". It was also further held that the words "any money due from him or from the estate of the person whom he represents to the company" occurring in Section 186 of the Companies Act must

be confined to money due and recoverable in a suit by the Company and they did not include any moneys which at the date of the application u/s 186 of the Companies Act could not have been so recovered. Therefore, it is clear that the decision in Hansraj's case is of no assistance to the petitioner as we are not concerned in this case with a provision similar to Section 186 of the Companies Act.

In New Delhi Municipal Committee's case, the Supreme Court considered Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 which related to the power of the Estate Officer to recover rent or damages in respect of the public premises as arrears of land revenue. In the light of the provisions contained in Section 7 of the aforesaid Public Premises Act, 1958, it was held that the word "payable" occurring in Section 7 in the context in which it occurred meant, "legally recoverable". Therefore, it was further held that if the recovery of any amount was barred by the law of limitation, the Estate Officer could not insist that the said amount was payable. It was also further held that Section 7 provided a special procedure for realisation of rent and arrears and did not constitute a source of foundation of a right to claim debt otherwise time-barred. Thus it is clear that the decision in New Delhi Municipal Committee's cases turned upon the provisions contained in Section 7 of the aforesaid Public Premises Act. Therefore, it is not possible to hold that this decision is of any assistance.

9. It is relevant to notice that a claim may be barred by time but nevertheless it does not disappear nor it is extinguished. In the event the claim is barred by time, all that happens is that such a claim cannot be enforced in a Court of Law by way of a suit or other proceeding to which the Limitation Act applies. The expiry of the period of limitation prescribed for a suit to recover the amount due, does not destroy the right to the amount. It only bars the remedy. Section 27 of the Limitation Act, 1963 only provides that at the determination of the prescribed period of limitation limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Thus Section 27 in terms applies only where a suit for possession of property has become barred by limitation. The Limitation Act with regard to personal actions bars the remedy without extinguishing the rights. It is only in the case of recovery of possession of any property on the determination of the period of limitation prescribed by the Limitation Act, not only the remedy is lost but the right is also extinguished. But it is relevant to notice that there is a distinction between actions for recovery of debts and those for recovery of possession of property. A debt does not cease to be due merely because it cannot be recovered through a Court of Law by filing a suit, after the expiration of the period of limitation prescribed under the Act for instituting the suit. Thus in all personal actions, the right subsists although the remedy is no longer available. It is on this principle, a creditor whose debt becomes barred by time by reason of expiry of the period of limitation can even realise the debt by any other method other than by way of a suit. The Limitation Act does not prevent a creditor from recovering lawful debt due to him by any

other mode available other than a suit. In this connection it is relevant to notice Section 60 of the Contract Act which enables a creditor to apply the payment made by a debtor, without any specific direction as to application of such payment, towards any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

The following are the observations made by the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*,

".....On this, the question arises for consideration whether a debt which is time barred can be the subject of transfer and if it can be, how it can benefit the Board to take it over if it cannot be realised by process of law. Now it is the settled law of this Country that the statute of Limitation only bars the remedy but does not extinguish the debt. Section 28 of the Limitation Act provides that when the period limited to a person for instituting a suit for possession of any property has expired, his right to such property is extinguished. And the authorities have held - and rightly, that when the property is incapable of possession, as for example, a debt, the Section has no application and lapse of time does not extinguish the right of a person thereto. u/s 25(3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount. When a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt (vide Section 60 of the Contract Act). It has also been held that a creditor is entitled to recover the debt from the surety, even though a suit on it is barred against the principal debtor. And when a creditor has a lien over goods by way of security for a loan, he can enforce the lien for obtaining satisfaction of the debt even though an action thereon would be time-barred."

In *Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay and Another*, while considering the power to discontinue supply of energy to a consumer who neglects to pay the charge or sum due, it has been held that the word "due" occurring in Section 24 of the Indian Electricity Act, cannot be interpreted in a narrow sense as only restricting the amount within the period of limitation or which could be successfully claimed by a suit. It has also been further held that there is no logical basis for preferring a narrow construction to the ordinary construction viz., the wider construction. Thus it has been held to mean all moneys owed or payable even though their recovery may be barred by the law of limitation. Therefore, even if it is supposed that the K.E.B. is not entitled to recover the amount through a suit, filed in a Court of Law, the right to recover it otherwise than by way of a suit is neither extinguished nor in any way it is affected by the provisions of the Limitation Act. The very liability of the petitioner to pay the amount is not extinguished.

10. There is also another approach to the case. Even for the sake of argument It is presumed that the provisions of the Limitation Act are applicable, the limitation will commence or begin to run only from the date of the demand. No doubt,

electricity is "goods" and it is a moveable commodity. But the sale of it and recovery of the value of it are governed by the Regulations and the K.E.B. is under an obligation to follow the procedure prescribed under the K.E.B. Supply Regulations, 1988 (hereinafter referred to as "Supply Regulations") and demand the amount towards the energy consumed in accordance with the Supply Regulations. The value of the energy consumed does not become payable under the Supply Regulations no sooner it is consumed, whereas it becomes due and payable only on issuing the bill. Regulation 30 of the Supply Regulations provides for "Power Supply Charges". According to the said Regulation 30, the K.E.B. has to furnish to the consumer every month or at such intervals as prescribed by the K.E.B. from time to time, the power supply bills for the actual or in its absence the assessed demand and/or consumption, either at the spot or by post and the bill amount has to be paid within 15 days from the date of presentation of the bill. The mode of payment is also provided by Regulation 30.4, of the Supply Regulations. According to it, the consumer shall have to pay the power supply charges at the office of the issue or at the jurisdictional cash counters in cash or demand draft/cheque issued in favour of Karnataka Electricity Board. There is also a provision for issuing an additional or supplemental bill. Clause (8) of Regulation 30 of the Supply Regulations provides that if at any time during verification of the Consumer's ledger accounts any erroneous claims are noticed, the consumer is liable to pay the difference In case the revised claims are more than the claims already made. Thus Clause (8) of the Regulation 30 of the Supply Regulations enables the K.E.B. to issue additional bill/s in case it notices on verification of consumer's ledger accounts any erroneous claims. In such an event, the consumer is liable to pay the difference in case the revised claims are more than the claims already made. Sub-clause (c) of Clause (8) thereof further provides that the supplemental claims shall be payable within 30 days from the date of intimation of the claim, failing which the installation is liable for disconnection. Therefore, even if it is construed that even for the demand and recovery of the charges payable towards consumption of electrical energy otherwise than by way of a suit, the period of limitation of three years is applicable; that period commences only from the date of demand made as the charges for consumption of electricity are payable and the same are paid only after the bill is presented. Therefore, it is not possible to hold that the claim is otherwise barred by time.

In *H.D. SHOURIE v. MUNICIPAL CORPORATION OF DELHI AND ANR.* AIR 1989 Delhi 219 while considering the question as to when the electricity charges become payable, it has been held thus:

"11. As I read Section 24 of the Electricity Act and Section 283 of the Corporation Act, it appears to me that the amount of charges would become due and payable only with the submission of the bill and not earlier. As has been mentioned hereinabove, it is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in Section 24 is to mean

consumption of electricity and if the argument of the learned Counsel for the petitioner is correct, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid, then even without a bill being issued a notice of disconnection would be liable to be issued u/s 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days notice if charges due to it are not paid. The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill, the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent.

12. Section 455 of the Municipal Corporation Act states that no proceedings for recovery of any sum which is due shall be commenced after the expiry of three years on which the sura becomes due. As I have already observed, the electricity charges become due after the bill is sent and not earlier. This being so, the proviso to Section 455 will apply only when the bill has been sent and the remedy available with the respondents for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of Section 455 would come into play after the submission of the bill for electricity charges and not earlier.

The aforesaid decision accords with the view expressed by me above.

11. It is also not possible to hold that either Article 14 of the Limitation Act is applicable. Article 14 of the Limitation Act provides as follows:

Description of suit

Period of Limitation

Time from which period begins to run

14. For the price of goods sold and delivered where no fixed period of credit is agreed upon

3 years

The date of the delivery of the goods.

In the case of supply of electrical energy, the Supply Regulations govern the contractual relationship of the Board and a Consumer. The Supply Regulations fix the period for payment of the price of goods sold and delivered i.e., the Electricity sold and delivered. Therefore, Article 14 is not attracted because Supply Regulations framed in exercise of the statutory powers fix the period for

payment. However, Article 15 of the Limitation Act, 1963 is attracted because it provides a period of limitation of 3 years, for the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit, when the period of credit expires. The Supply Regulations fix a date for payment of the amount for the electrical energy supplied and consumed. According to the provisions of Supply Regulations, the power charges become payable on the issuance of the Bill and the same has to be paid within a period prescribed and as indicated in the Bill. The period indicated in the Bill can be taken as the period fixed for credit, because the charge is payable no sooner the bill is presented. Even if it is held that the Limitation Act applies, it is Article 15 of the Limitation Act that is applicable. In that event the limitation commences after the expiry of the period fixed in the bill for payment of the amount. Annexure-J is issued on 21-1-1989. The period fixed for payment is 21-2-1989. Therefore, the limitation commences on the expiry of 21-2-1989. Hence it is not possible to hold that the claim made by the K.E.B. is barred by time. For the reasons stated above, Points (i) and (ii) are answered as follows:

For making a demand and recovering the amount due representing charges of energy supplied and consumed by a consumer otherwise than by way of a suit, the provisions of the Limitation Act are not applicable. In case the charges for electrical energy supplied or consumed by a consumer, are to be recovered by way of a Suit, in the light of the provisions contained in the Electricity (Supply) Regulations Act, Article 15 of the Limitation Act, 1963 is attracted and the Suit has to be filed within three years on the expiry of the date fixed for payment of the amount demanded under the Bill.

Point No. (iii):

12. The contention of the petitioner is that the very basis of the Bill (Annexure-J) is not warranted inasmuch as it is issued on the basis that Current Transformer Ratio (CTR) should have been 60/5A from 1-12-1983, whereas the Current Transformer Ratio was fixed as 30/5A. According to the case of the petitioner the Current Transformer Ratio fixed earlier as 30/5A is correct and the bill issued on the basis that the CTR should have been 60/5A is not warranted in law. In this regard, the K.E.B. in its statement of objections has contended "that the formulae for finding out the CT Ratio fs for every 100 KVA connected on 11 KVA side 5.2. amps. Therefore, for the first 400 KVA, the CT Ratio would be 30/5A. If it is, above 600 KVA the CT Ratio would be more than 30/5A. Thus as on 1-4-1984 the availment of power by the petitioner was 800 KVA and as on 1-7-1984 it was 1400 KVA. Therefore, the CT Ratio constant should have been 60/5A. The contention that on 4-7-1984 the CT Ratio had been changed from 30/5A to 60/5A to cater to the additional load of 600 KVA is not a correct statement inasmuch as when the connected load or supply reaches beyond 600 KVA the meter constant would be 60/5A. Therefore, from 1-1-1984 the CT ratio would be 60/5A. The contrary allegation that on 4-7-1984 the CT ratio has been changed from 30/5A to 60/5A is false. The allegation that the meter was faulty

on 2-4-1985 and the meter has been calibrated on inspection etc., are nothing to do with the CT ratio constant. The equipments so far as CT Chamber is concerned is altogether different and that is nothing to do with the faulty meter. As stated above in the wiring diagram submitted along with the pre-commission report, CT ratio has been mentioned as 60/5A. The petitioner is fully aware of CT ratio of 60/5A. The contrary contention is absolutely false. The contention that the respondents should have served a notice on the petitioner alongwith the report bringing to its notice that CT ratio is 60/5A cannot be countenanced since the petitioner is fully aware of the same."

13. In addition to this, during the course of arguments Sri K.C. Naik Wadi, Assistant Executive Engineer (Electrical) also explained the current transformer ratio and submitted two working sheets as Annexures-1 and 2. Sri K.C. Naik Wadi on the basis of the text books, explained to the Court that in the case of 200 KVA, CT ratio should be 10/5; and in case of 400 KVA, it should be 20/5 and in the case of 600 KVA, it should be 30/5 and in the case of more than 600 KVA, it would be 60/5A. The learned Counsel for the petitioner has not placed any material to show that the Current Transformer Ratio as explained by the Assistant Executive Engineer and as stated in the statement of objections is in any way incorrect. That being the position, let me now apply to the correct Transformer Ratio, as stated by the Assistant Engineer, and also as pleaded by the K.E.B. The facts necessary for the purpose of applying the Transformer Ratio are not in dispute. As per the communication dated 28-10-1983 produced as Annexure-A approval was made for availing the power of 1400 KVA in the following re-phased manner duly postponing the date of availment of power supply:

1. 400 KVA within one month from the date of the communication i.e., 28-10-1983;
2. Additional 200 KVA from 1-1-1984;
3. Additional 200 KVA from 1-4-1984;
4. Additional 600 KVA from 1-7-1984.

It is not in dispute that the energy was supplied in the phased manner as stated above. Thus, on 1-4-1984, the energy was supplied to the petitioner at 800 KVA and once the supply of energy exceeds 600 KVA, as per the C.T. Ratio formulae, C.T. Ratio should be 60/5A and not 30/5A. The Ratio 30/5A fixed at the time of commencement of supply of energy ought to have been changed on 1-4-1984 itself. But it was not changed and it continued to remain as 30/5A and the bills were issued on that basis only. It was noticed only on 15-7-1988, when the Assistant Executive Engineer (Electricals), R.T. Sub-Division, Belgaum, along with the Assistant Executive Engineer (Electrical) TTAC, Hubli, inspected the H.T. installation in the presence of the Supervisor of the petitioner. During the course of inspection, the CT and PT Box Chamber was opened and it was observed that the CT ratios 60/5A ought to have been selected and not 30/5A. Immediately,

the petitioner was informed by the communication dated 16-8-1988 produced as Annexure-B which reads thus:

"Sub: Inspection and calibration of HT metering cubicle of M/s. Banhatti Co-op. Spinning Mill Ltd. Banhatti RR. No. BNHT-1Ref: EEE HT Sub-Division Belgaum Letter No. BGM/RT/JKD/HT11 609-15/2-8-1988 addressed to EEE/JKD and copied to this office. With reference to the above I wish to bring to your notice that AEEE (RT) Sub-Division Belgaum along with Assistant Executive Engineer Electrical, TTAC Hubli while inspecting your H.T. installation on 15-7-1988, in your and your supervisor presences have opened CT and FT box chamber and it was observed that the ST ratios selected as 60/5A and not 30/5 as stated earlier in their reports and accordingly Assistant Executive Engineer, Electrical, TAC Hubli has drawn up a mahazar and obtained signature of all the officers present including yourself and your supervisor. And accordingly for connected ratio as 60/5 of CT the Multiplying constant for bill is as follows:

Kwh - 120 KVAh - 6 KVAhMD - 6 and as per this we have to revise your previous bills, since the same have been calculated taking monthly constant for bill of. CTR of 30/5, which is also as per A.T. reports only. Revised bills will be sent soon after obtaining certain clarification from higher authorities. This is for your information.

Yours faithfully, Sd/- 16/8. Assistant Executive Engineer, Electrical KEB, Jamkhandi."

Thereafter a mahazar was drawn on 15-7-1988 regarding the inspection made and also about the CT ratio. The said mahazar is produced by the petitioner. Pursuant to that a bill dated 6-9-1988 was issued.

14. It is not disputed before me that if the Current Transformer Ratio is taken as 60/5A and if it is held that it is applicable from 1-12-1983, the calculation made in the bill is correct. However, the contention of the petitioner is that even if the Current Transformer Ratio 60/5A is applicable, it becomes applicable only from the time more than 600 KVA was made available, and more than 600 KVA was made available only from 1-4-1984. Therefore, the Bill issued by the K.E.B. on the basis that 60/5A CT ratio was applicable from 23-11-1983 is not correct. I have in the previous paragraph held that C.T. ratio 60/5A becomes applicable only from 1-4-1984 and not earlier to that. Therefore, the Bill in question (Annexure-J) issued on the basis that the C.T. ratio 60/5A became applicable from 23-11-1983 cannot be held to be correct. Therefore, the demand in so far it covers the period from 23-11-1983 to 31-3-1984 on the basis that 60/5A C.T. ratio is applicable cannot be sustained. It is also relevant to notice that on 2-8-1988, the Assistant Executive Engineer (Electrical) K.E.B. (RT) Sub-Division, Belgaum, made a report. A copy of the report is produced as Annexure-F by the petitioner. The relevant portions of the report are as follows:

"On verification of the records, it is observed that the consumer has enhanced the C.D. from time to time as detailed below:

- a) Date of service: 23-11-1983 with the initial C.D. of 400 KVA.
- b) Additional 200 KVA was serviced from 1-1-1984.
- c) Again Additional 200 KVA was serviced from 1-4-1984.
- d) Once again additional load of 600 KVA was serviced from 1-7-1984 (C.D. from 1-7-1984 is 1400 KVA)."

Additional loads as detailed above had been serviced without obtaining the concurrence of the R.T. Staff. Before servicing additional loads the connected C.T.R. should have been verified to cater the additional loads from time to time.

On 14-7-1988, I have verified the KVAMD reading in the H.T. metering cubicle along with the Assistant Executive Engineer, Electrical, T.A.C., KEB, Hubli, and "reading was 206 i.e., total M.D. is $206 \times 3 = 618$ KVA since there has been taken as M.F. for the KVAMD meter. And this was compared with the readings of the meters installed in the consumers metering panel and we have come to the conclusion that the C.T.R. connected in the above H.T. metering cubicle should have been 60/5 since C.T.R. of 30/5 is not sufficient to C.D. of 1400 KVA.

From the wiring diagram submitted along with the pre-commissioning report it is observed that the C.T.R. connected are 60/5A. But in the report it was mentioned as 30/5A.

As per the sealing register on 4-7-1984, the C.T.P.T. box door etc., were opened and resealed and probably on this date the C.T.R. was changed from 30/5A to 60/5A to cater the additional load of 600 KVA. But there is no report available in the concerned file for having changed the C.T.R. from 30/5 to 60/5. The M.Cs. for billing for 30/5 C.T.R. and 60/5 CTR are as follows:-

M.C. for billing:

for CTR:30/5A CTR:60/5A KWh 60 120 KVAh 7.2 14.4. KVAMD 7.2 14.4. On 2-4-1985, the faulty KVAh/KVAMD meter has been replaced by L & C make, KVAh/KVAMD mater and for this meter the M.F. for 30/5 CTR and 60/5 CTR are as follows:-

M.C. for billing:

for CTR:30/5A CTR:60/5A KVAh 3 6 KVAMD 3 6 and inspection and calibration report was submitted vide this office letter No. BGM/RT/ BGKT/HT-25/1156-39 dated 29-7-1985:

We have requested the Managing Director of the firm, and the Assistant Executive Engineer, Electrical, O & M. Sub-Division, Jamkhandi, and Section Officer, K.E.B. Banhatti, Supervisor of the firm to be present on 15-7-1988 and accordingly on 15-7-1988 the C.T.P.T. box. chamber was opened in their presence and it was observed that the C.T. Ratios were selected as 60/5A, and Assistant Executive Engineer, Electrical, TAC, Hubli, has drawn-up a Mahazar and obtained the Signatures of the above persons. Subsequently, the following works

were attended.

"(3) the installation is to be back billed since the C.T. Ratios connected are 60/5A from the date of service or from 1-7-1984 from which date G.D. has been enhanced to 1400 KVA."

15. Thus it is clear that the C.T. Ratio ought to have been fixed as 60/5A w.e.f. 1-4-1984 and not w.e.f. 23-11-1983. It is submitted by the learned Counsel for the K.E.B. that if the demand for the period under Annexure-J for the period from 23-11-1983 to 1-4-1984 has to be deducted as not warranted, a sum of Rs. 16,788-52 has to be deducted out of Rs. 91,02,646-40. Consequently the correct amount would be Rs. 90,85,857-88. In SLP No. 2376/1987 preferred against the Judgment of this Court in W.A.No. 2526/87 - SECRETARY K.E.B. AND ANR. v. A.T. PONNAPPA Secretary, KEB v. A.T. Ponnappa while disposing of the above Special Leave Petition, the Supreme Court has observed as follows:

"Special Leave Petition is rejected but we may observe that no objection can be taken to the attention of the Electricity Board being drawn by an audit objection that there are arrears which remain to be paid. It is always open to the Electricity Board, on its attention being drawn by information that arrears of Electricity charges have not been collected, to take action to collect them."

In addition to this, as already pointed out, it is open to the K.E.B. to issue supplementary bills for the additional amount payable by the consumer on verification. Regulation No. 30.08 of the Supply Regulations covers the case in question- Further, required opportunity has been afforded to the petitioner. That it is so, is clear from the various records produced by the petitioner only. All this has happened due to the fact that on the increase in the power supply from 600 KVA to 800 KVA, C.T. ratio was not changed. This fact is not in dispute. There is also no dispute as to the additional sum of Rs. 90,85,857-88 payable by the petitioner if the C T. ratio of 60/5A is applied from 1-4-1984. Accordingly, point No. (iii) is answered as follows:

"The demand made under the bill dated 21-1-1989 Annexure-J is valid to the extent of Rs. 90,85,857-88."

16. It is contended by Sri U.L. Narayana Rao, learned Counsel for the petitioner that it is not possible for the petitioner to pay the entire amount in a lump sum; that the petitioner is a Co-operative Spinning Mill and it is at the stage of infancy though it has started making profits; therefore, reasonable instalments may be granted. If the KEB would have been vigilant and the concerned officers would have attended the matter well in time, the consumer-petitioner - would not have been put to the difficulty which it has to face now. It is mainly because of the lapse on the part" of the concerned officials of the K.E.B. such a situation has arisen. The lapse is very serious one. It is for the K.E.B. to take appropriate action against the officials who were in charge of the installation and supply of energy to the petitioner-Mill. This is one incident which has come to the notice of the Court, which the authorities have been able to surface it. There may be many

such cases. Probably it is one of the reasons why the K.E.B. suffers from loss and lack of funds. Under these circumstances, the petitioner is entitled to reasonable instalments. The amount payable as per the findings recorded on point No. (iii) is Rs. 90,85,857-88p.

17. It is submitted on behalf of the respondents that in the facts and circumstances of the case, petitioner may be directed to pay a sum of Rs. 4,00,000/-per month until the amount is satisfied along with the current Bill. It is stated that the current Bill itself comes to more than Rs. 5 lakhs per month. If that is so, it appears to me that payment of a further sum of Rs. 4,00,000/- per month would be onerous. Therefore, taking into consideration the facts and circumstances of the case and also the fact that the petitioner has to pay monthly bill running into more than Rs. 5 lakhs, it appears to me that the payment of Rs. 3 lakhs per month along with the current Bill with one default clause would be just and appropriate.

18. For the reasons stated above, the Writ Petition is disposed of in the following terms:

1. The amount payable by the petitioner under Annexure-J is Rs. 90,85,857-88p. and not Rs. 1,02,646-40p.
2. The petitioner is permitted to pay the aforesaid sum of Rs. 90,85,857-88p. on a monthly instalment of Rs. 3 lakhs per month along with the current bill until the aforesaid amount is satisfied with one default clause.
3. If the petitioner defaults in payment of any one instalment, it is open to the K.E.B. to proceed to recover the entire balance of the amount in accordance with law.
4. The first instalment shall be paid along with the Bill that shall be issued for the month of December, 1989.
5. In the facts and circumstances of the case, there will be no order as to costs.