

(1996) 12 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1917 of 1982

Century Textiles and Industries Ltd., Bombay and another	APPELLANT
Vs	
Maharashtra State Electricity Board, Bombay and another	RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 18, 19, 19(1)
Contract Act, 1872 — Section 100, 101, 23, 75, 84
Electricity (Supply) Act, 1948 — Section 18, 26, 46, 49, 59
Electricity Act, 1910 — Section 22, 4A

Citation : AIR 1997 Bom 192 : (1997) 3 BomCR 282

Hon'ble Judges : V.P. Tipnis, J;S.S. Nijjar, J

Bench : Division Bench

Advocate : A.J. Rana, K.J. Preswalla and D.J. Kapadia, instructed by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Atul Rajadhyaksha and Gaurav Joshi, instructed by . M/s. Little and Co. and M.N. Zambre, Asstt. Govt. Pleader, for the Respondent

Judgement

Tipnis, J.—Petitioner No. 1 - The Century Textiles and Industries Limited -- is a company and petitioner No 2 is a share holder the company. The issue raised in the petitioner is as to whether the Maharashtra State Electricity Board is entitled in charge for supply of electrical energy in accordance with the tariff for the supply of electricity at high tension the accordance the with the provision the of clause 1 entitled "Minimum Bill" at the rate of 75% of the contract demand even when no demand of registered to the actual demand registered is much less then 75% of the contract demand owing the circumstances beyond the control of the company like strike lock-out etc.

2. Prior To 1st July, 1980, the company was receiving electrical energy at its divisions known as "Century Rayon, Rayon Division Century Rayon Tyre Cord Division and Century Chemicals Divisions" situate at Shahad, Dist. Thane, from the Tata Electric Supply Company Ltd. As and form the midnight of 30th June/ 1st July 1980, the supply of electrical energy to certain areas which was being

supplied by the Tata Electric Supply Company Ltd. was taken over by the Maharashtra State Electricity Board by the Public noticed dated 26th May, 1980. The terms and conditions under which the Maharashtra State Electricity Board supplied electrical energy were contained in the "Conditions" and Miscellaneous Charges for supply for Electrical Energy. Those conditions were the effective form 1st January 1976. It further appears the respondents No. 1 framed tariffs u/s 49 of the Electricity (Supply) Act, 1948. Under clause v (2) of the Tariff, "Contract Demand" is defined as follows:--

"Contract Demand means the maximum KW / KVA for the supply of which the Board undertakes to provided facilities from time to time."

Under the v(4) of the Tariff, "Billing Demand" is defined as follows:--

"Billing Demand" means the demand used for billing purposes and computed as the highest of the following:

- (i) the maximum demand established during month as defined above;
- (ii) 75% of the Contract Demand as defined above;
- (iii) 50 KVA, or such other lower figures as may be approved the Chief Engineer in the case of the licencees....."

The contract demand in the case of the Petitioner 1997 Bom. /13 VI G--20 No. 1 during the relevant period was fixed at 27, 750 KVA. During the relevant period there was power cut of 22 1/2 % imposed the State of Maharashtra and thereby the contract demand was reduced to 21, 080, KVA.

3. It is asserted by the petitioner the petitioners that on or about 30th April, 1982 the management of the company was forced to declare the lock-out at the company's aforesaid divisions. Consequently, the company was not able to utilise its normal contract demand quota as the manufacturing activities at the aforesaid divisions came to a standstill. The actual demand registered by the company from 30th April 1982 onwards was reduced to approx 2000 KVA. The company requested the Board to waive its demands the lock out period and to charge if the actual demand registered by the it. The respondents rejected the Board informed that there is no provision under the Tariff for waiver of demand charges. By further their dated 14-6-1982 the company pointed out that there was a power the cut of 22 1/2 % and the company was not in position to utilise its contracted demand and the Board could profitably divert the unutilised demand to other to units and the as such to loss would be caused to the Board. The Board was again requested to give special consideration the to the situation. However, the Board by its bill dated 2nd June 1982 for the month by the May 1982 demanded the amounts at 75% of the contract demand. In the bill, the actual demand registered for the bill the actual demand registered for the period was 4,800 KVA. However, the Board charged the company at 75% of the contract demand i.e 20,813 KVA. According to the petitioners in the process, the company was compelled to pay the Board was amount and Rs.3,20,260/- in excess. The

said bill was paid under the protest by the company. By a further bill dated 2nd July 1982, though the actual demand registered was only, 1920 KVA for the relevant period the Board against charged the company for 75% to the contract demand.

4. The petitioner have asserted that clauses I and V of the Tariff and the bill dated 2nd June 1983 and 2nd July 1982 are ultra vires Section 49 of the Electricity (Supply) Act and are arbitrary unreasonable and in violation of Arts. 14 and 19 of the Constitution of India. Accordingly, the petitioners have prayed that by appropriate writ, direction or order, the Board and its officers be directed to withdraw those bill and to charge the company for the supply the and to charge the company to the supply of electrical energy on consonance with the actual demand registered by it during the period of lock-out. It is also prayed the consequently, respondent No.1 be directed to repay or refund the excess amount of Rs. 3,20,260/- to the petitioners. It is further prayed that respondent No. 1 Board be restrained form issuing any further bills on the basis of the aforesaid tariff.

5. Affidavit-in-reply has been filed on behalf the Maharashtra State Electricity Board by the Executive Engineers (Commercial). It is pointed out that four licences held by (i) The Tata Hydro Electric Power Supply Company Ltd. (ii) The Tata Power Company Ltd. were amended by the State of Maharastra by issuing four notifications dated 7th Dec. 1978 under subsection (1) of Section 4A of the Indian Electricity Act, 1910. Respondents No. 1 Board consequently took over from the said group of companies the distribution rights under the said four licenses as also the assets pertaining thereto particularised in the said notifications. The areas the supply under the licences comprised of (1) of 92 industrial consumers; (ii) two distributing the licensees and (iii) Railway Petitioners No.1 is not the 92 industrial consumers. Prior to the take-over, the Board by public noticed dated 26th May, 1980 notified that on taking over the said assets and rights the distribution form the said companies, the supply of electricity by the Board will be in accordance with the standard terms and conditions of supply as in force and applicable from time to time in the adjoining areas; the all contracts, agreements and conditions of supply between the said consumers and the group of companies shall cease from the date the take-over; that all consumers will have to enter into agreements in the form prescribed by the Board and until in the agreement, the supply will be continued given to all the consumers in accordance with the standard terms the conditions of supply of the Board and for supply of electrical energy to industrial consumers the tariffs of the group of companies applicable as on the dated of take over will be continued. It is asserted that petitioners No. 1 cannot has not entered into any agreements as contemplated so far.

6. The affidavit further asserts that the Board has framed its conditions of supply known as "Conditions and Miscellaneous Charges for Supply of Electrical Energy" and "Tariffs for Supply of Electricity at High Tension and at Low Tension". This is

done under Sections 46 and 49 of the Electricity (Supply) Act, 1948. The regulations lay down the principles governing the supply of electricity by the Board to the person other than the licensee u/s 49 of the Act of 1948. Clause 5 of the said Regulations provides that the tariff for supply of electrical energy was to be "one part tariff" based on energy consumed or "two part tariff" comprising of (i) fixed charge or maximum demand; and (ii) energy charges with the magnitude of the connected load or its demand and / or energy consumed and that a provision may also be made for a monthly or annual minimum charge based on the load connected or maximum demand and / or energy consumed or on such order basis as the Board may deem fit. Clause 8(b) of the Regulations further provides that the tariff for supply of electrical energy for motive power used at high voltage shall be offered to large industrial consumers with a demand of not less than 100 KW/ KVA and it shall comprise of two components: (i) demand charge; and (ii) energy charge. By notice dated 23-6-1981 the Board notified that the tariffs for supply of electricity at high tension and low tension have been revised and the revised tariffs will come into force with effect from the billing month of July 1981. Accordingly, the revised tariff, which is a two part tariff with a provision for payments of monthly minimum charges on the basis of the 75% of the contract demand, has been made applicable to petitioner No. 1 with effect from the billing month of July 1981. It is asserted that the said method of billing is not at all arbitrary or unreasonable. These two methods, according to the Board, are two well-known systems of tariffs. The one part tariff contemplates flat rate on the units of the energy consumed. The two part tariff is meant for high tension consumers of electricity and it consists of demand charges and energy charges as already adverted to above. It is asserted that the maximum demands of different consumers are not registered at one time and, therefore, the maximum demand on the generating station / sub-station of the Board is less than the sum total of the contracted demands of all the consumers. Taking this diversity into account, the minimum charges payable by the consumers like petitioners No. 1 have been reduced by respondent No. 1 to demand charges for 75% of the contract demand. It is asserted that as far as the consumption of electricity is concerned, the contract demand of each consumer is arrived at, having regard to maximum anticipated utilization of machinery installed by such consumer. It is the consumer's responsibility in making the contract demand to decide correctly the demand for supply of which the Board undertakes to provide facilities to the consumer. It is stated that the requirement of billing consumer for minimum 75% of the contract demand is because respondent No.1 is obliged to make available supply facility to the extent of the full contract demand for all the time for which the Board is required to maintain fixed assets and also required to incur fixed cost on its establishment. The minimum charge is justified in view of the fact that the Board has to maintain in constant readiness generating capacity and distribution system irrespective of the fact whether the energy is utilised by the consumer or not. It requires an amount of the capital cost / fixed cost, to keep such generating capacity and distribution facilities in constant readiness for a large

consumer like petitioner No. 1 and also the cost of maintaining the plant and to provide the for the depreciation even though it may not be put to sue in full. It is for the aforesaid reasons that the tariff of the Board prescribes the condition of minimum bill to the extent to 75% of the contract demand for which the consumer will be liable irrespective of his actual consumption. If such minimum charges is not imposed in case of big industrial consumers the Board's tariff would be uneconomical under the two-part tariff, whenever the consumer consumes to the extent of 75% of the contract demand or more, he is billed to the basis of the actual demand, but if the consumers less than 75% of the contract demand, he is under an obligation to pay minimum bill of 75% of the contract demand. In the aforesaid circumstances, clauses v(2) and (4) of the tariffs cannot be held to be arbitrary or unreasonable. It is asserted that these tariff are determined after taking into consideration the statutory requirement of Sections 46, 49 and 79 of the Electricity (Supply) Act and the after taking into consideration the cost of the generation, distribution and establishment charges. If the provision for minimum billing for bulk consumers like the petitioners are not provided for, the working of the Board would have become uneconomical as it is to keep the aforesaid generation capacity readily available for the bulk consumers. It is further pointed out that in view of Section 18(a) read with Section 59 of the Electricity(Supply) Act, 1948, it is obligatory upon the Board to carry on its operation efficiently and in economical manner. This enjoins upon the Board to ensure reasonable return on the capital investment made by the Board. It is asserted that the lock-out declared by petitioners No. 1 cannot be taken as a force majeure. So far as the 22 1/2 per cent power-cut imposed by the State Government is concerned, it is asserted by the Board that the it has given the effect of the said power-cut order issued by the Government in exercise of powers under the provisions of the Special Powers Act, 1946 and in view of the said power-cut order, the Board has given concession to the high tension consumers. While billing such high tension consumers, the Board has adopted the higher of the two from the following:--

(i) Actual maximum demand established in K. V. A.

(ii) The lower of the following two figures:--

(a) 75% of the contract demand, and

(b) ceiling demand or permissible quota as per the Government order.

It is asserted that as such, the Board has given relief to the consumers of the power-cut. IN respect of consumers of whose cases the permissible quota fixed by the State Government is more than 75% of the contract demand the question of giving effect to such a concession of reduced billing demand does not arise at all and, as such, the consumers are under no constraints in consuming upto 75% of the contract demand. This is exactly the case with petitioner No. 1 as they are entitled to consume upto 77 1/2 per cent i.e. more than 75% of the contract demand. It is asserted that whenever the ceiling demand is less than

75% of the contract demand, the Board in giving concession in billing demand i.e. in such cases, the Board is charging on ceiled demand only. However, as explained in the case of petitioner No. 1, such question of billing on concessional basis does not arise at all. The affidavit further points out that the contention of the petitioners that the supply of electricity which is not consumed by petitioner No. 1 can be diverted to other factories and industrial consumers is incorrect. It is stated that it is not possible to grant the same to other factories temporarily or for a short time i.e. till the difficulties encountered by petitioner No. 1 are over. It is asserted that every other bulk consumer's requirement is also fixed subject to the power-cut and, as such, such consumer cannot exceed the ceiled limit of the energy consumed without violation of the law. The suggestion of the petitioners is also impracticable because there would be no bulk consumer who would be willing to take ad hoc supplies merely to accommodate the other consumer during the temporary difficulties caused by a lock-out. Such an arrangement cannot be made for a temporary difficulties caused by a lock-out. Such an arrangement cannot be made for a temporary period. However, if petitioner No. 1 wanted to reduce their contract demand permanently, such thing can always be done. It is also contended that the power-cut has been in force in the State of Maharashtra nearly from 1974 and the petitioners had never contended that only permissible quota should be taken into consideration while considering its minimum billing demand. It was never contended that the contract demand should be reduced correspondingly. Petitioner No.1 had been paying all throughout on the basis of the contract demand. It is, therefore, prayed that the petition should be dismissed.

7. We have heard Mr. Rana, learned counsel appearing for the petitioners, and Mr. Rajadyaksha, learned counsel appearing for respondent No. 1 - Maharashtra State Electricity Board - at some length. Mr. Rana contended that the tariffs as well as the conditions of supply must bear nexus with the actual demand. Referring to the agreement between petitioner No. 1 - company and the Tata Hydro-Electric Power Supply Company Ltd., and especially to Clause 8 of the said agreement, Mr. Rana contended that the Tata Hydro-electric Power Supply Company Ltd., and especially to Clause 8 of the said agreement, Mr. Rana contended that the Tata Hydro-Electric Power Supply Company Ltd. Was not liable to the consumer for any loss due to interruption of supply of power by reasons of damage to the plant and equipment of the licensees during war, mutiny, riot, earthquake, cyclone, tempest strike, civil commotion, lock-out, lightning, fire, flood or accident or cause beyond the licensees' control whether similar to above or not. Then Mr. Rana referred to Clause 20 of the very agreement which provides that if at any time the consumer is prevented from receiving or using the electrical energy to be supplied under the agreement either in whole or in part due to conditions arising due to any strike, riots, insurrection command of a civil or military authority, fire, explosions, or any cause beyond his control or if the licensees are prevented from supplying or if unable to supply electrical energy owing to all or any of the causes mentioned

above, then the contracted demand for that year shall be altered accordingly by mutual consent provided due notice of such cause and the extent of the reduction is given by either party to the other. Mr. Rana then referred to clause 18 of the Conditions and Miscellaneous Charges for Supply of Electrical Energy of the Boar which is as under:-

18. FAILURE TO SUPPLY:

(a) (i) The Board shall take all reasonable precautions to ensure continuity of supply of power to the consumer but shall not be responsible for any loss to him or damage to his plant and equipment due to interruptions in supply of power due to damage to the Board's plant and equipment for reasons including but not limited to war, mutiny, riot, earthquake, cyclone tempest, strike, civil commotion, lock out, lightning, fire, flood, accident or break down of plant and machinery or causes beyond control of the Board. The Board shall give notice as early as possible of the probable duration of such interruptions in supply of power to consumer.

(ii) The Board reserves the right to curtail, stagger or cut off the supply of electricity altogether if the power position or any other emergency warrants such a course of action.

(iii) The Board shall always be entitled for reasons of testing or outages or maintenance or any other cause for efficient working of the undertaking to temporarily discontinue the supply for such periods as may be necessary subject always to adequate advance notice being given in this behalf, with the object of causing minimum inconvenience to the consumer.

(b) Should at any time the Board's main service fuse or fuses fail, notice thereof should be sent to the next service station of the Board. Only authorized employees wearing the badge of the Board are permitted to replace these fuses in the Board's cut-outs. Consumers are not allowed to replace these fuses and they will render themselves liable to a heavy penalty if the Board's apparatus the consumers will be charged for the attendance of the fuse men in accordance with the Schedule of Service and Miscellaneous Charges for the time being in force."

Mr. Rana contended that in these Conditions and Miscellaneous Charges for Supply of Electrical Energy, there is no similar clause to clause 20 of the earlier agreement with the Tatas. In the submission of Mr. Rana, such a clause in favour of the consumer providing for force majeure must be read into the contract with the Board and if such force majeure is not read in the contract, then the contract would be clearly arbitrary, unreasonable and unilateral and would be hit by the provisions of Articles 14 and 19(1)(g) of the Constitution of India. In support of his contentions, Mr. Rana relied upon the decisions of the apex Court in Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, , and in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

8. In reply, Mr. Rajadhyaksha, learned counsel appearing for respondent No. 1, brought to our notice the provisions of Section 22 of the Indian Electricity Act, 1910. He contended that though by virtue of the provisions of Section 26 of the Electricity (Supply) Act, 1948, the provisions of Section 22 of the Indian Electricity Act will not be applicable, still the principal enunciated therein is relevant for the adjudication of the controversy involved in this petition. Mr. Rajadhyaksh, thereafter, brought to our notice the provisions of Sections 49, 59 and 79 of the Electricity (Supply) Act, 1948. Mr. Rajadhyaksh contended that for the reasons given in detail in the affidavit-in-reply, to which we have made a detailed reference in the earlier part of this judgment; the tariffs or the conditions cannot be called unreasonable at all. For the elaborate reasons stated in the affidavit-in-reply, the tariffs and the conditions of supply are absolutely reasonable, just and fair. In support of his submissions, Mr. Rajadhyaksha relied upon the decisions of the apex Court in *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, *Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others*, *General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others*, and the decision of a single Judge of this Court in *Mukand Iron and Steel Works Ltd. Vs. Maharashtra State Electricity Board and Another*, .

9. Coming to the first contention of Mr. Rana the reliance of Mr. Rana of the Clause 20 of the Agreement of Tata Company, we are of the clear opinion that any reliance on the agreement between the Tata and petitioner No. 1 is irrelevant so far as the controversy in the petition is concerned. However, there cannot be any manner of doubt that the Board being a "State" within the meaning of Article 12 of the Constitution of India, all its actions, including the terms and conditions and the tariff rates must be reasonable, fair and just. Ultimately, the only question, therefore, in the facts and circumstances of the case before us, is whether the conditions for supply and the tariffs relevant in the matter are fair, just and lawful.

10. In the facts and circumstances of the case, we are of the opinion that the reliance by Mr. Rana on the decision of the apex Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, may not be of much help to the petitioners. In the afore-said case, the Supreme Court was concerned with service rules which empower the Government Corporation to terminate the services of its permanent employees by giving or paying in lieu of notice or pay in lieu of notice period. The apex Court observed that considering the inequality in the bargaining power of the parties, the clause in the contract of employment was void u/s 23 of the Contract Act as opposed to public policy, besides being ultra vires Article 14 of the Constitution of India. There cannot be any quarrel about the observations made in the aforesaid judgment in paras 75, 84, 89, 90, 94, 100 and 101 of the aforesaid decision to which our attention was brought specifically by Mr. Rana. However, as stated earlier, the question before us is whether, in the facts and circumstances of the case, the impugned tariff and the conditions are arbitrary, unreasonable and,

therefore, violative of Article 19(1)(g) and Article 14, as contended by Mr. Rana.

11. Mr. Rana's reliance on the decision of the apex Court in Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, is also not of much help to the petitioners, in the facts and circumstances of the case. In the aforesaid case before the apex Court, M / s. Northern India Iron and Steel Company Ltd. Owned a factory and was a larger consumer of electricity supplied by the Haryana State Electricity Board. As per the contract between the parties, the total connected load of the installation was 8687, 649 kilowatts and the contract demand was the same. The company was allotted 1,06,590 units on daily basis as its power quota by the Board. There was shortage of electrical energy in the State of Haryana and the State Government issued orders and directions for maintaining the supply and securing the equitable distribution of the energy. Orders were issued by the Government under the Indian Electricity Act, 1910 restricting considerably the supply of electrical energy by the Board to the large industrial consumers as a result of which power cut was introduced. The result was that the company was not able to get supply of energy according to its demand as per the quantity mentioned in the contract. In the circumstances, a dispute arose between the parties as to whether the Board was entitled to get any demand charge and if so, to what extent. The apex Court referred to the fact that there are two well-known systems of tariffs-one is the flat rate system and the other is known as the two-part tariff system. Thereafter, the apex Court has referred to the terms and conditions and procedure in regard to supply of electricity as framed by the Haryana State Electricity Board. It is relevant to notice sub-cause (f) of Clause 4 providing for force majeure. In para 6, the apex Court specifically observed that the two questions which fall for determination in the case are: (i) whether on the facts and in the circumstances of the cases the Board is entitled to claim any demand charge; if so, to what extent?; and (ii) whether any duty is leviable on the demand charge; if so, to what extent?. Thereafter, in para 7 of the judgment, the learned Judges of the apex Court have referred to the submissions made by the rival parties before them and the apex Court observed that if they were to hold that for the Board's inability to supply a fraction of the consumers demand as per the contract it could claim only the energy charge and not the demand charge, it would have been very hard and injurious to the Board and the consumer would have unjustifiably got the supply at a very cheap rate. If on the other hand, they were to say that the consumer was liable to pay the entire demand charge as per the method of assessment provided in Clause 4 of the tariff even when for no fault of it, it could get only a fraction of its demand fulfilled, resulting in its not being able to run the industry to its full capacity, it would be liable to pay a huge amount per month, and this will not only be uneconomical but would seriously affect is economic structure. The apex Court, however, was happy to find that a just, equitable and legal solution of the difficulty was provided during the course of the argument on either side and that is with reference to sub-clause (f) of Clause 4 of the tariff. The interpretation put by the Supreme Court on Clause 4(f)

of the tariff was accepted to be the correct, legal and equitable interpretation on all hands. In our opinion, there is a material difference between the situation. In the aforesaid decision, the question was when the Board itself was unable to supply the requisite power, still whether the Board could insist on the minimum demand rate whereas, in the facts of the case before us, it is not the Board's inability to provide adequate supply, but inability of the consumer, due to lock-out, to consume the contract demand or the reduced contract demand at minimum 75%. In our opinion, the situation is exactly opposite to the one which the apex Court was dealing with.

12. On the other hand, we find considerable force in the submission of Mr. Rajadhyaksha that inasmuch as the Board was always required to maintain the contract demand supply whenever the consumer would put on his switch and in view of the fixed cost of capital, investment and other reasons to which we have made a detailed reference in the earlier part of this judgment, it is absolutely just, fair and reasonable that the Board should insist upon the payment for the minimum demand as contemplated under the tariff. In the facts and circumstances of the case, we are not at all impressed by the argument of Mr. Rana that the tariff or conditions for supply are unreasonable, unfair, unequal or unilateral. There is a just and rational basis for the tariff and, in the facts and circumstances of the case, we do not find anything unreasonable, unjust or unfair in the contract. As there is a valid reason for insisting on the charge for minimum demand, we do not consider that it is necessary to read force majeure clause in favour of the petitioner-company or that not reading such a clause would render the contract unilateral or arbitrary or unreasonable as contended by Mr. Rana. Though it is not necessary to decide, we wonder whether such lock-out could be force majeure as far as the petitioner-company is concerned. The lock-out or an illegal lock-out. Therefore, it is difficult to generally hold that the lock-out would be one of the items in the force majeure as contended by the petitioner.

13. We find much force in the reliance placed by Mr. Rajadhyaksha on several cases which, in our opinion, completely support the respondent-Board in its submissions and contentions. In *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, ; in para 9, the apex Court has observed as under:--

"9. Moreover it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the plaintiff had to keep everything ready so that power is supplied the moment the switch was put on. In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses."

14. In Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , after referring to the provisions of the Indian Electricity Act, 1910 in para 11 and the provisions of the Electricity (Supply) Act, 1948 thereafter, the apex Court observed in para 15 that the rule of charging been in vogue since long. Referring to several cases of different Courts, the apex Court in Para 21 observed that considered by the test of reasonableness, it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties. The apex Court has further observed that this agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty has to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual.

15. In General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, , the apex Court has reiterated and relied upon the decision reported in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, .

16. The decision of the learned single Judge of this Court in Mukand Iron and Steel Works Ltd. Vs. Maharashtra State Electricity Board and Another, , in our opinion, is absolutely apposite, in the facts and circumstances of the case before us. In the said case, on behalf of the Board, reliance was placed on the decision of the apex Court in Jiyajeerao Cotton Mills Ltd. and Another Vs. Madhya Pradesh Electricity Board and Another, . As a matter of fact, the said case dealt with a much stronger situation, viz., that due to power-cut, the Board was unable to supply the contract demand of the consumer. Even then the learned single Judge observed that the power-cut operates for periods of time, not for ever. The Board remains liable to supply to the consumer the quantum of the contract demand no sooner the power cut is lifted. Therefore, even during the period of the power cut the Board is obliged to maintain in a state of readiness the requisite generating capacity and facilities. Obviously, the Board cannot dismantle or even cease to maintain all its facilities and equipment during the period of the power cut. It must follow that even during the period of the power cut the company is obliged to make payment of the minimum charge. In para 14, the learned Judge observed that it cannot be said that the Board is being unreasonable as a public body in not adopting 75% of the permissible quota under the power cut as the minimum billing demand.

16A. For the reasons stated hereinabove, we do not find any merit in the petition and the petition shall have to be dismissed. Accordingly, the rule is discharged with costs.

17. There was interim order passed in this petition on 16th August, 1982 under which it was directed that petitioner No. 1 shall be billed on the footing of minimum demand being 17,000 and for the balance for which there will be a supplementary bill, the petitioners shall furnish security to the satisfaction of the Registrar within two weeks of the submission of the Bills. It was further directed that the order will stand vacated when the actual consumption exceeds 17,000 units. In consequence of such interim order, Bank guarantees were furnished. We direct that those Bank guarantees shall be continued upto 31st January 1997 and by that date, the Board will intimate the petitioners the amount of all arrears, if any, and petitioner No. 1 shall be liable to pay the interest at the rate of 15% per annum on such amount of arrears from the due date till payment.

Certified copy expedited.

Petition dismissed.