

(1987) 04 RAJ CK 0024
In the Rajasthan High Court
Case No : Special Appeal No. 274 of 1986

D.C.M. Ltd. and Another

APPELLANT

Vs

Assistant Engineer (HMT Sub-Division), Rajasthan State
Electricity Board, Kota and Another

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 26, 44, 49
Electricity Act, 1910 — Section 22, 22B, 24
Evidence Act, 1872 — Section 115

Citation : AIR 1988 Raj 64 : (1987) 2 WLN 538

Hon'ble Judges : J.S. Verma, C.J.; I.S. Israni, J

Bench : Division Bench

Advocate : Shanti Bhushan and G.S. Singhvi, for the Appellant; L.M. Singhvi, A.K. Singhvi and H.C. Rastogi, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This is a special appeal against the order of a learned single Judge (N. M. Kasliwal) in S. B. Civil Writ Petition No. 1024 of 1984, decided on May 14, 1986 by which the writ petition has been partly allowed to the extent a concession was made by the respondent-Rajasthan State Electricity Board (hereinafter to be referred to as "the R.S.E.B."), but has been dismissed for the remaining part. The only relief granted to the petitioners on the basis of the concession made by the R.S.E.B. is a direction for proportionate reduction in the minimum charges claimed by the R.S.E.B. to the extent of the power cuts during the relevant billing month; revision of the bill for payment of minimum charges on this basis; and refund, if any, due to the petitioners as a result of revision of the bills. The main grievance of the petitioners in the writ petition that Clause 16(c) of the agreement dt./-Dec.15, 1981 between petitioners and R.S.E.B., particulars of which are stated hereafter, requiring payment of minimum charges at almost three times the normal rate specified for other similar heavy

consumers being invalid cannot be enforced still survives, since the petition has been dismissed to that extent. This appeal re-agitates the same point in its various facets.

2. Shortly, stated the main point for decision in this appeal, subject to the preliminary objections raised on behalf of the R.S.E.B. which are mentioned later, is : whether, Clause 16(c) of the supplementary agreement dt./- Dec. 15, 1981 which requires the petitioners to pay minimum charges at the rate of 372.30 units per KVA per month of the contract demand of 25 MW of electricity supplied to the petitioner's Fertilizer plant at Kota, instead of the normal rate of 130 units per KVA applied to all other such heavy consumers, is invalid and, therefore, not enforceable against the petitioners? The further question is whether this relief can be granted to the petitioners in a writ petition under Article 226 of the Constitution. This other question has to be answered with reference to the preliminary objections raised on behalf of the R.S.E.B. bearing in mind the fact that the learned single Judge granted partial relief to the petitioners in the writ petition and that too on the basis of a concession made on behalf of the R.S.E.B. for reduction in the amount of minimum charges proportionate, to the power cuts imposed by the R.S.E.B. during the relevant billing month. Accordingly, at least to this extent, availability of the writ jurisdiction was not disputed and grant of that relief by the learned single Judge has also not been challenged by the R.S.E.B. There is some controversy about the exact amount by which the minimum charges claimed by the R.S.E.B. under the aforesaid Clause 16(c) have been reduced as a result of this relief granted in the writ petition against which no grievance has been made by the R.S.E.B. but it is common ground that the relief is substantial amounting to a large sum of money and the same is not material for deciding the points involved in this appeal. This fact is mentioned merely to emphasise that the preliminary objections to maintainability of the writ petition raised at the hearing of this appeal are common and apply equally even to the relief already granted by the learned single Judge on the concession made on behalf of the R.S.E.B. Therefore, the question is whether the remaining grievance of the petitioners should not be considered and decided on merits in spite of this position:

3. The material facts which are few may now be stated. The petitioner D.C.M Limited owns a number of industrial units in Kota in the State of Rajasthan of which M/s. Shriram Fertilizers and Chemicals is one. For this Fertilizer plant the petitioner obtained a connection for supply of electricity which was given by the R.S.E.B. vide agreement dt. Feb. 8, 1973 under which the contract demand was 6 MW and the minimum charges payable were at the rate of 130 units per KVA. Thereafter the contract demand to the petitioner's Fertilizer plant was increased to 15 MW vide supplementary agreement dt./- April 18, 1974 and the minimum charges continued to remain at the rate of 130 units per KVA. The petitioner made an application dt./- Sept. 21, 1977 for increase of the contract demand to the Fertilizer plant to 20 MW. There is some controversy between the parties whether the petitioner voluntarily agreed thereafter to increase the

contract demand to 25 MW instead of 20 MW. According to the petitioner the consent for increase of contract demand to 25 MW instead of 20 MW was given by petitioner vide letter dt./-Aug. 1, 1978 under compulsion, since the R.S.E.B. insisted on increase to that extent, while the R.S.E.B. avers that this increase to 25 MW was at the petitioner's instance. However, the merits of this controversy need not be gone into, since that is not material for decision of the points involved in this appeal. Factually the contract demand was increased to 25MW for which the petitioner gave consent vide letter dt.Aug. 1, 1978 resulting in the execution of the supplementary agreement dt./- Dec. 15, 1981 amending the initial agreement dt./- Feb. 8, 1973 to this extent. The significant addition in this supplementary agreement dt./- Dec. 15, 1981 was the insertion of Clause 16(c) providing for payment of minimum charges by the petitioner at the rate of 372.30 units per KVA instead of the earlier minimum charges at the rate of 130 units per KVA. This increase in the minimum , charges from approximately 20% to 60% of the total possible consumption or in other words to three times of the minimum charges specified earlier has been achieved by providing in the said Clause 16(c) that the consumer shall draw/utilise/consume electric energy corresponding to the aforesaid contract demand of 25 MW at a minimum load factor of 60% each month which means that the minimum energy consumption for which the petitioner would be billed each month is 1,09,50,000 Kwh. Clause 17(a) in the agreement provided for proportionate reduction in the minimum charges during power cuts. It may be mentioned that no instance has been brought to our notice wherein the minimum charges for any such heavy industrial unit is prescribed in excess of 130 units per KVA which was also the minimum charges payable by the petitioner prior to the supplementary agreement dt./-Dec. 15, 1981 introducing the impugned Clause 16(c). This supplementary agreement was brought into force by releasing the additional supply thereunder on April 26, 1983. The impugned Clause 16(c) along with Clause 17(a) therein are as under : --

"16(c) : The consumer shall draw/utilise/ consume electric energy corresponding to the aforesaid contract demand of 25 MW at a minimum load factor of 60% each month.

The consumer shall be billed on actual electric power/energy consumed/utilised but in case during any month the electric energy consumption is less than 1,09,50,000 Kwh per month, the consumer shall pay to the Board an amount as worked out in accordance with the Clauses 16(a) and 16(b) for the minimum energy consumption of 1,09,50,000 Kwh. Moreover, if such charges are less than the minimum charges as may be prescribed from time to time, then the consumer shall be liable to pay the minimum charges so worked out on the basis of the tariff in force from time to time, provided that for period up to one month in a financial year when the plant will be closed for preventive maintenance, this clause for the purpose of billing shall not apply. The billing in such period will be on the basis of the minimum charges prescribed in the normal tariff proportionately for that period."

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

Obviously, it was because of the aforesaid Clause 17(a) that the R.S.E.B. conceded in the writ petition to give proportionate reduction in the minimum charges to the extent of power cuts which it had not given earlier in the bills presented to the petitioner and it is on this basis that partial relief in the writ petition as aforesaid has been granted

4. Briefly stated the petitioner's case is that the aforesaid Clause 16(c) in the supplementary agreement dt./- Dec. 15, 1981 is arbitrary and even contrary to the statutory provisions contained in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 governing the power of the R.S.E.B. to prescribe minimum charges to be paid by a consumer, and therefore, it is invalid. It is contended that the R.S.E.B. being "State" within meaning of that expression in Article 12 of the Constitution, it is amenable to the writ jurisdiction under Article 226 of the Constitution for grant of relief in case of violation of the petitioner's right of equality under Article 14 of the Constitution. It is further contended that the said Clause 16(c) is also an unconscionable term inserted in the agreement by the R.S.E.B. taking advantage of its dominant position having the monopoly for supply of electricity to which the petitioner's consent was obtained under duress because of the absence of any option to the petitioner. On this basis it is also urged that this amounts to a contract of adhesion and is invalid. For these reasons relief against enforcement of this invalid term in a statutory contract is claimed.

5. One of the points raised in the writ petition and decided against the petitioner has been expressly given up in this appeal by Shri Shanti Bhusan, learned counsel for the appellants. Petitioners had also contended unsuccessfully before the learned single Judge that for applicability of aforesaid Clause 16(c) to the petitioner it was incumbent on the R.S.E.B. to give uninterrupted supply without any power cuts and the moment there was a power cut, applicability of this clause was arrested. This construction of Clause 16(c) was rejected by the learned single Judge and that has been expressly given up at the hearing of this appeal. Other details of this point are, therefore, unnecessary.

6. Several arguments have been advanced by Dr. L. M. Singhvi, learned counsel for the respondents which include certain preliminary objections to the maintainability of the writ petition or the desirability of exercise of the discretionary power under Article 226 of the Constitution in petitioner's favour. These preliminary objections are stated first. It was contended that the writ petition is based on a purely contractual right which cannot be enforced under Article 226 of the Constitution, and that the contract in the present case is not a statutory contract, since a contract is statutory only when its terms and conditions are prescribed by statute. It was urged that in the present case the

impugned Clause 16(c) is not prescribed by a statute but is the result of mutual negotiations between the parties leading to the petitioner's express consent and execution of the agreement thereafter. It was argued that every contract by a statutory authority is not a statutory contract and, therefore, merely because the R.S.E.B. is a statutory authority, a contract entered into by it does not become a statutory contract. Learned counsel also contended that the petitioner is guilty of laches and its conduct amounts to waiver of its rights, if any, as well as acquiescence. It was urged that such a contract was executed in Dec. 1981 and the petitioner knew about it since giving its consent in letter dt./- Aug. 1, 1978, but the challenge was made by the writ petition only in 1984, which is sufficient, to deny the discretionary relief to the petitioner. Another preliminary objection taken was the existence of alternative remedy of arbitration available to the petitioner. The filing of two civil suits prior to the writ petition, of which one has been withdrawn, is also relied on to support the argument of existence of alternative remedy. On merits Dr. Singhvi contended that the petitioner has taken a somersault by amendment of the writ petition to raise the above contention, since the petition as initially filed was based only on the aforesaid construction of Clause 16(c), the point now given up, and not its validity. It was urged that the argument relating to validity of Clause 16(c) on the basis of contravention of statutory provisions and Article 14 of the Constitution and/or it being a contract of adhesion is a clear afterthought and contrary to the initial stand in the writ petition as well as the two civil suits filed earlier. It was also urged that the requisite pleadings for setting up a case of violation of Article 14 of the Constitution are not present in the petition on account of which no occasion arises for considering and deciding the same. It was also argued that in fact there is no hostile discrimination against the petitioner, who belongs to a different category for the reasons given by respondents. It was also contended that the essentials of a contract of adhesion are not present and, therefore, the petitioner cannot be granted any relief even on that basis. In short, the arguments of Dr. L. M. Singhvi on behalf of the respondents are : that, the writ petition is not maintainable; that, it is not a fit case for exercise of the discretionary power under Article 226 of the Constitution; and even on merits there is no violation of Article 14 of the Constitution or any statutory provision etc. and it is not a contract of adhesion to permit grant of any relief to the petitioner.

7. The preliminary objections raised by Dr. Singhvi are considered at the outset. We have formed the opinion that none of these preliminary objections can be sustained. It may be mentioned that even the learned single Judge was not impressed by any of these preliminary objections while granting partial relief to the petitioner on merits which could not have been granted if any of these preliminary objections were to be sustained. It is significant that the respondents conceded to grant of that partial relief and no challenge has been made by the respondents to the same.

8. The existence of alternative remedy of arbitration or of civil suit does not

forbid exercise of power under writ jurisdiction and can be only a ground for refusal to exercise that discretionary power. As already stated partial relief has been granted in the writ petition and that is not challenged. This fact considerably reduces the weight of such an objection. In our opinion, this alone is sufficient to reject this preliminary objection at the stage of appeal against the decision of the writ petition on merits by a single Bench. Moreover, the petitioner's case is based on invalidity of the aforesaid Clause 16(c) inter alia on the ground that it is violative of Article 14 of the Constitution. In a case like the present where the grievance made is of violation of the fundamental right of equality, refusal to exercise power under Article 226 of the Constitution can be only in extraordinary circumstances, but no such extraordinary circumstances exist in the present case. That apart, the point involved for decision does not require decision of any disputed question of fact and the conclusion on merits has to be reached on facts beyond controversy and appearing from the record. There is no controversy that one of the two suits filed by the petitioners was withdrawn after the writ petition was filed. According to Dr. Singhvi the civil suit is based on different grounds and not the validity of Clause 16(c). If that be so, then the petitioner would be driven to file another suit hereafter in case the preliminary objection is upheld. At any rate, a civil suit cannot be called an efficacious alternative remedy in the present case. In our opinion, it would be wholly inappropriate to decline exercise of power under Article 226 of the Constitution in the present case on the ground of existence of any alternative remedy to the petitioner. This preliminary objection is, therefore rejected.

9. We are also of the opinion that the respondents' contention of laches, waiver or acquiescence by the petitioner has no merit. The facts clearly show that there can be no legitimate foundation for this argument. No doubt the supplementary agreement containing the impugned Clause 16(c) is dt./- Dec. 15, 1981, but the supply of additional electricity thereunder was commenced only on April 26, 1983. The first bill on the basis of the impugned Clause 16(c) for payment of minimum charges was for a month in 1982 even before commencement of the additional supply under that agreement in April, 1983. A civil suit was promptly filed in 1982 itself by the petitioner challenging that bill which was issued even before commencement of the additional supply under the agreement which formed the basis of that bill. After commencement of the additional supply on April 26, 1983 the first bill in accordance with Clause 16(c) issued by the R.S.E.B. to the petitioner was for the billing month of March, 1984 and this too was promptly challenged by filing another civil suit on April, 12, 1984 and thereafter this writ petition was filed on Aug. 7, 1984. The petitioner, however, paid all along the undisputed amount due under the bill. It is difficult to appreciate how, in these circumstances, it can be legitimately claimed that the petitioner is guilty of any laches, in filing the writ petition or that it would be deemed to have waived its right, if any, or that it acquiesced by its conduct. The facts already mentioned clearly negate any such plea and also indicate that the petitioner promptly challenged any bill as soon as it was issued for recovery of

minimum charges by invoking Clause 16(c). Moreover, the continued application of the impugned Clause 16(c) on the date of writ petition and thereafter giving rise to the question of its validity is not disputed. Grant of partial relief in the writ petition based on the concession of R. S. E.B. as a result of construction made of Clause 16(c) and corresponding reduction in the amount of minimum charges claimed by R.S.E.B. is another factor to negate this preliminary objection of the respondents. This also shows that the writ petition cannot be thrown out merely on the ground of this preliminary objection.

10. The next objection raised on behalf of the respondents is that the dispute between the parties relates merely to a contractual right which can neither be enforced nor avoided by a writ petition under Article 226 of the Constitution. There is no dispute that the R.S.E.B. is "State" within the meaning of that expression used in Article 12 of the Constitution so that it is amenable to the writ jurisdiction under Article 226 of the Constitution. For the same reason it is obvious that if a case of violation of a right under Article 14 of the Constitution is made out by the petitioner against the R.S.E.B. then there would be no impediment in granting relief under Article 226 of the Constitution.

11. Dr. Singhvi contended that the right litigated in the present case is a mere contractual right governed by the Supplementary agreement dt./- Dec. 15, 1981 containing the impugned Clause 16(c) therein and the same is not based on a statutory contract to permit the writ jurisdiction of the court being invoked. It was urged by Dr. Singhvi that a contract is statutory only when its terms and conditions are prescribed by statute and every contract by a statutory authority is not a statutory contract. According to him, the contract contained in the aforesaid agreement dt./- Dec. 15, 1981 is not a statutory contract, but a contract made after prolonged negotiations between the parties with mutual consent on the basis of negotiated terms which are not prescribed by any statute. Dr. Singhvi has referred extensively to the correspondence between the parties, more particularly the documents marked X/1 to X/12 (at pages 241 to 263 of the paper book) annexed to the additional affidavit dt./- March 21, 1986 filed on behalf of the R.S.E.B. to show that the condition contained in the impugned Clause 16(c) of minimum 60% load factor was inserted after prolonged negotiations during which the petitioner had initially agreed to even higher 85% load factor in the document marked X/2 dt./- April 23, 1966. This correspondence as well as the petitioner's other documents including letter dt./- Aug. 1, 1978 have been relied on by Dr. Singhvi to show that it was a mutually negotiated agreement on the terms agreed by the petitioner. Reliance was placed on these documents to also show that there was a reasonable basis to differentiate the petitioner from other heavy consumers because of the sanction given to the petitioner for setting up captive power plants for self generation of the energy on terms different from those in the case of others given similar sanction. The petitioner's capacity for self generation of electricity by virtue of these sanctions is also relied on by Dr. Singhvi to show that the petitioner's need of electricity is in excess of 25 MW which is the contract demand under the

agreement dt./- Dec. 15, 1981 containing the impugned Clause 16(c) on account of which the condition cannot be called either onerous or discriminatory. This argument of Dr. Singhvi relating to discrimination and the condition being onerous will be considered later while dealing with these matters. At this stage under this head we are considering only the question whether the writ petition is based merely on a contractual right so that exercise of power under Article 226 of the Constitution should be refused for this reason alone.

12. In support of this contention Dr. Singhvi relied on several decisions and more particularly on Radhakrishna Agarwal and Others Vs. State of Bihar and Others, Woodcrafts, Assam v. Chief Conservator of Forests, Assam, Shillong, AIR 1971 Ass 92, and Bal Krishan Vaid v. State of Himachal Pradesh AIR 1975 H P 30 . He also placed reliance on Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, Sham Lal and Others Vs. State of Punjab, State of Punjab v. BalbirSingh AIR 1977 SC 1717, and State of Haryana v. JageRam AIR 1980 SC 2018 . In our opinion, none of these decisions which lay down well established principles, supports the contention of Dr. Singhvi in the present case. It is not necessary to deal individually with these cases which lay down the settled principles on the point and the ultimate conclusion therein is based on the fact of the particular case. It is sufficient to say that the principles enunciated in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, cover the different categories of cases arising in such a situation and the present case falls within the category to which the writ jurisdiction extends.

13. Reliance placed by Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and other similar decisions is of no assistance to the respondents. In none of these decisions there was any discrimination made by the State between bidders of the same class all of the whom were offered equal opportunity to enter into a contract with the State on the same terms. In other words, there was no exclusion of any bidder who belonged to the same class and there was also no discrimination made by requiring any one of them to enter into contract with the State on terms which were not the same for all or were in any way different or onerous. There was thus equal opportunity to all similarly placed persons to enter into contract with the State on the same terms. Accordingly there was no discrimination against any one at the threshold inasmuch as no one was excluded from entering into contract with the State nor was any one required to be bound by any term or . condition which was more onerous or different as compared with the corresponding term or condition prescribed for others similarly situated.

14. Applicability of Article 14 of the Constitution at the threshold for entering into a contract with the State is well settled by a catena of decisions which need not be cited. In Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and other decisions in that line, a contract was validly entered into with

the State without the same or any part of it being invalid as violative of Article 14 of the Constitution and an attempt was made thereafter to avoid the binding effect of any such valid contract. The attempt was repelled on the ground that the writ jurisdiction of the Court could not be invoked to avoid the applicability of a valid contract. These decisions are, therefore, distinguishable and have no application in the present case where a term in the contract is challenged as invalid being in violation of certain statutory provisions and also Article 14 of the Constitution. These decisions cannot be relied on to decline :

exercise of power under Article 226 of the Constitution even if it is found that a term or condition in the statutory contract is invalid being violative of Article 14 of the Constitution. None of these decisions, therefore, supports the respondents' contention.

15. According to Dr. Singhvi a contract is statutory when its terms and conditions are prescribed by a statute and a writ petition can be based only in respect of a right referable to a statutory contract. In our opinion, this limited definition of a statutory contract spelled out by Dr. Singhvi from these decisions is sufficient to cover the present case within its ambit and, therefore, it is unnecessary to go further into the precise meaning of a statutory contract for the purpose of exercise of power under Article 226 of the Constitution.

16. A reference to certain statutory provisions may now be made to indicate that this is a case of a statutory contract even according to the limited definition of Dr. Singhvi. The rights and obligations of the Electricity Board as a licensee having the monopoly to supply electricity to all consumers within the State under the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 is too well known to require any elaborate discussion. These rights and obligations of the Electricity Board are governed by certain statutory provisions which are not negotiable and are determined by or under the statute itself.

17. The relevant provisions in the Indian Electricity Act, 1910 may first be noticed. Section 22 obliges the Board to supply to every person within the area of supply energy on the same terms at which it supplies to other similar consumers within that area and at the same time a corresponding liability is fastened on the consumer to agree to pay to the licensee the minimum charges which would be a reasonable return on the licensee's capital expenditure to meet the possible maximum demand of that consumer. Section 22B empowers the State Government to issue orders for ensuring equitable distribution of energy and for this purpose the statutory obligation of the Board may be avoided in the given circumstances. Section 23 requires that the licensee shall not show undue preference to any person in making any agreement for the supply of energy. Section 24 enables discontinuance of supply to a consumer neglecting to pay the due charges. These provisions clearly indicate that the Board has a statutory obligation to supply available electricity to every person on his requisition subject to the prescribed conditions and that all such consumers who are similarly placed are to be treated alike. The proviso in Section 22 obliges the

consumer to agree to pay to the licensee certain minimum charges to ensure a reasonable return on the capital expenditure incurred by the Board to meet the maximum possible demand of that consumer. Clause VI of the Schedule to this Act is also material. The relevant portion of Clause VI reads as under :--

"VI. Requisition for supply to owners or occupiers in vicinity--(1) Where after distributing mains have been laid down under the provisions of Clause IV or clause V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition or within such longer period, as the Electrical Inspector may allow supply, and, save insofar as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition :

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it--

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not-exceeding fifteen per centum of the cost of the service line required to comply with the requisition, and"

This provision further indicates the obligation of the Board to supply electricity to the consumer on a requisition in the prescribed manner and the corresponding obligation of the consumer is to "tender to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy..... to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition." The first proviso in Clause VI of the Schedule and the proviso in Section 22 of this Act clearly indicate that the liability of the consumer is to pay the minimum charges which would ensure a reasonable return on the capital expenditure incurred by the Board to meet the possible maximum demand of the consumer and this amount as indicated by the first proviso to Clause VI should not exceed 15% of the cost of the service line required to "comply with the requisition of the consumer.

18. These statutory provisions provide for the consumer's obligation to pay minimum charges specified by the Board and require him to execute an agreement containing such a condition in order to raise the obligation of the Board to supply electricity to that consumer. These provisions also clearly indicate the rationale behind the provision for recovery of minimum charges from

the consumer. When the charges for actual consumption of energy by the consumer falls short of the minimum charges the consumer's obligation arises to pay an amount in excess of the cost of electricity consumed. The minimum charges are to be paid by the consumer to ensure a reasonable return on the capital expenditure incurred by the Board as cost of the service line required to comply with the requisition of that consumer. This reasonable return is indicated by the statute as an amount not exceeding 15% of the cost of the service line required for making the supply to that consumer. This obviously, is the concept of minimum charges which the Board is empowered by statute to recover from the consumer within the maximum limit prescribed by compelling the consumer to undertake such an obligation in an agreement duly executed before the Board's obligation to supply electricity to that consumer can arise. We find that this is the manner in which concept of minimum charges has been understood so far, even in the only decisions cited before us. See *Saila Bala Roy and on her death Saila Bala Roy and on her death Malti Rose Vs. Chairman, Darjeeling Municipality, Ratenlal Muraka v. Kerala State Electricity Board* ILR (1976) 1 Ker 435, and *M/s. Man Industrial Corporation v. Rajasthan State Electricity Board* AIR 1986 Raj 137. On behalf of the respondents no attempt was made to show that the concept of minimum charges payable by the consumer is different and not the one already indicated. With respect we concur with the view taken in these decisions to indicate the true concept of minimum charges. In our opinion no different view can be taken on the basis of these statutory provisions.

19. Reference may now be made to certain provisions of the Electricity (Supply) Act, 1948. Section 26 lays down that the State Electricity Board shall have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and this Act shall be deemed to be the licence of the Board for the purposes of that Act. The second proviso to Section 26 expressly lays down that the provisions of Clause VI of the Schedule to the Indian Electricity Act, 1910 shall 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. There is no controversy that the said Clause VI applies in the present case to the R.S.E.B. in respect of the supply being made by it to the petitioner's Fertilizer plant at Kota. Section 44 then lays down the restriction on establishment of new generating stations etc. It provides that it shall not be lawful for any person, except with the previous consent in writing of the Board, to establish or acquire a new generating station or to increase its capacity. The proviso then lays down that the consent shall not be withheld by the Board except in the given situations. It is with the consent of the Board obtained under this provision that the petitioner has set up its two captive power plants. The first consent of the Board was obtained by the petitioner in 1966 as a result of which adaptive power plant for self generation of electricity was set up by the petitioner of the capacity of 35 MW in 1969. Thereafter, the petitioner obtained the consent of the Board in March, 1982 for increase of its capacity of self generation to 75 MW but the same having lapsed it then obtained consent in June, 1982 for an additional 10 MW

only on the basis of which its capacity for self generation was increased in 1983 by an additional 10 MW. In other words, in 1969 the petitioner set up a captive power plant for self generation of 35 MW of electricity and in 1983 increased it by 10 MW to bring its total up to date capacity of self generation to 45 MW. It may be noticed that the petitioner's capacity for generating 35 MW came into existence in 1969 even prior to the initial agreement with the Board on Feb. 8, 1973 for supply of 6 MW of electricity to the Fertilizer plant and the only addition of 10 MW to the capacity for self generation was made in 1983, after execution of the supplementary agreement dt. Dec. 15, 1981 containing the impugned Clause 16(c) by which the term pertaining to minimum charges was revised. The facts relating to petitioner's capacity for self generation are given here since this is also a factor relied on, by Dr. Singhvi in connection with some of his arguments and the effect thereof shall be considered while dealing with those arguments.

20. Section 49 of the Electricity (Supply) Act, 1948 is also material and reads as under : --

. "49. Provision for the sale of electricity by the Board to persons other than licensees --(1) subject to the provisions of this Act and of 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 co-ordinated 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."

The significance in the present case is only of a term or condition for the supply

of electricity contained in the supplementary agreement dt. Dec. 15, 1981 and, therefore, Sub-sections (1) and (4) of Section 49 are material. Sub-section (1) lays down that the supply of electricity by the Board to a consumer is to be "upon such terms and conditions as the Board thinks fit". Sub-section (4) says that the Board shall not show undue preference to any person in fixing either the tariff or the terms and conditions, for the supply of electricity. In other words, any hostile discrimination by the Board between consumers similarly placed in either fixing the tariff or the terms and conditions is clearly forbidden. It is also clear that the terms and conditions of supply of electricity are to be those which the Board thinks, fit, and specifies. These provisions read with those mentioned earlier and particularly the first proviso to Clause VI of the Schedule to the Indian Electricity Act, 1910 clearly indicate that the terms and conditions of supply are to be determined unilaterally by the Board and consumer must accept the same to get the supply. A written contract in a form approved by the State Government containing the terms and conditions of supply determined by the Board must be executed by the consumer to give rise to the Board's obligation to supply electricity to the consumer. There can be no doubt that the terms and conditions of supply which also include the term undertaking to pay the minimum charges fixed by the Board, are determined by these statutory provisions and the Board in exercise of its statutory powers prescribes these terms and conditions. It is also significant that the guidelines for fixing the terms and conditions are indicated by these statutory provisions which cast a duty on the Board not to make any hostile discrimination between similar consumers; the term relating to payment of minimum charges is required to be inserted to ensure a reasonable return on the capital expenditure incurred by the Board to meet the possible maximum demand of that consumer; and the same should not exceed 15% of the cost so incurred.

21. This being the mode prescribed for specifying the terms and conditions of supply of electricity which are to be incorporated in the written contract required to be executed by the consumer, there is no scope for contending that any of these terms and conditions is negotiable by the consumer or that the same is incorporated in the contract as a result of mutual consent of the Board and the consumer. In the face of these statutory provisions it is difficult to hold that the contract in the present case is not statutory even according to the limited definition of a statutory contract spelled out by Dr. Singhvi from the several decisions cited by him. In our opinion, these statutory provisions sufficiently indicate that the terms and conditions of the contract including the impugned Clause 16(c) have a statutory base inasmuch as they have been determined by the Board in exercise of statutory power which gives to the Board decisive voice in the matter. The consumer can get the supply according to his requisition only if he executes an agreement containing the terms and conditions specified by the Board. These terms and conditions of the contract having been prescribed in exercise of the statutory power given to the Board under these provisions, the contract is obviously statutory in nature even according to the restricted meaning

given by Dr. Singhvi.

22. The contract, therefore, fully satisfies the requirement of a statutory contract since the terms and conditions thereof have been determined by the R. S. E. B. in exercise of its statutory powers and the R. S. E. B. being "State" within the meaning of that expression used in Article 12 of the Constitution, it is amenable to writ jurisdiction of the Court for this purpose. This preliminary objection of the respondents also fails. The question is only of merits.

23. The next question is whether the above quoted impugned Clause 16(c) of the supplementary agreement dt. Dec. 15, 1981 is invalid for any reason. Before proceeding to consider this question we would quote the conclusion reached by the learned single Judge about, the nature of this condition. It was held by the learned single Judge as follows : --

"It is no doubt correct that the clause for the minimum energy demand of 1,09,50,000 Kwh. is onerous in comparison to other similarly situated consumers, but the fact remains that this condition was agreed by the petitioners with open eyes with full knowledge and sense of responsibility."

Thus even the learned single Judge has recorded the finding that the term relating to minimum charges payable by the petitioner contained in Clause 16(c) "is onerous in comparison to other similarly situated consumers."

24. The learned single Judge in spite of this conclusion declined to grant any relief on that basis, on the grounds, namely (1) the petitioner's right is purely contractual, which does not attract Article 14 of the Constitution; (2) remedy under Article 226 of the Constitution is not available in respect of a contractual right; (3) petitioner has not discharged the onus to show violation of Article 14; and (4) even though the condition is onerous in comparison to other similarly situated consumers, it was consciously agreed by the petitioners. In our opinion, none of these reasons can support the conclusion of the learned single Judge after he had rightly held that this condition prescribed for the petitioner "is onerous in comparison to other similarly situated consumers". This finding itself implies that the petitioner had discharged the burden to prove discrimination forbidden by Article 14 of the Constitution. We have already shown that the right arises out of a statutory contract to which the remedy under Article 226 of the Constitution is available. It is also clear that compliance of Article 14 of the Constitution is necessary in such a situation and relief can be granted if hostile discrimination can be shown amounting to violation of Article 14 of the Constitution. The last reason given by the learned single Judge that the petitioner consciously agreed to this term also does not require any elaborate discussion. It is one thing to say that this factor may be relevant for declining exercise of the discretionary power under Article 226 of the Constitution in petitioner's favour but another to hold that the Court is not empowered to exercise that power for this reason alone. This is relevant only as petitioner's conduct which may be material to support the plea of acquiescence or waiver and

no more. We have already rejected the preliminary objections based on laches, waiver and acquiescence. We may further add that for the reasons already given it is obvious that the giving of such an undertaking by execution of the agreement was no doubt a conscious act of the petitioner, but in the circumstances it cannot be held to indicate the petitioner's willingness to be bound by such an onerous condition, if it had the option. It is obvious that there was no option to the petitioner and, therefore, it cannot be said that the petitioner voluntarily and willingly chose and accepted the more onerous condition of a higher rate instead of the normal rate for payment of minimum charges. The willingness to accept such an onerous term with free consent can be assumed only where a consumer has an option or in other words he can get the supply of electricity he wants even without agreeing to any such term specified by the Board for being incorporated in the written contract without execution of which the consumer cannot insist on supply of electricity to him. It is not the Board's case that it was willing to honour the petitioners requisition and make the supply even without the petitioner undertaking in writing to pay minimum charges according to Clause 16(c). How can it then be said that the petitioner willingly accepted this term when the fact is that it had no option in the matter. None of the reasons given by the learned single Judge are, in our opinion, sufficient to deny relief to the petitioner in case it is found that the condition contained in the impugned Clause 16(c) is invalid. The only real question now surviving for our consideration is, therefore, the validity of the impugned Clause 16(c).

25. In this connection the contention of Dr. Singhvi that petitioner's pleadings are deficient in material particulars to sustain the plea of hostile discrimination based on Article 14 of the Constitution has to be considered. The petitioner has clearly stated that no other similar consumer has been required by the R. S. E. B. to give such an onerous undertaking of paying minimum charges in excess of the normal rate of 130 units per KVA except the petitioner, who has been required to give the undertaking to pay minimum charges at the rate of 372.30 units per KVA which is approximately three times the normal rate of minimum charges specified for others. The petitioner has further stated that there is no reasonable basis for making this discrimination. Instances have also been given to show that neither at any time prior nor subsequent to the supplementary agreement dt. Dec. 15, 1981 relating to the petitioner any consumer of contract demand of 25 MW or more has been required to give an undertaking for payment of minimum charges in excess of 130 units per KVA. The respondents have denied the allegation of hostile discrimination made by the petitioner by contending that there was reasonable basis to treat the petitioner differently. It has been pleaded by the respondents that Clause 16(c) of the agreement was incorporated after negotiations between the parties and keeping in mind the source of supply, pattern of generation, competing demands over supply position and uses for which it is earmarked. It has also been pleaded that this is a special contract for supply of electricity to the petitioner and the petitioner is, estopped

from challenging Clause 16(c) in the agreement after taking advantage thereunder. It has also been said that petitioner's existing capacity of 45 MW for self generation including the increase of 10 MW made in 1983 with the consent of the Board under S. 44 of the Electricity (Supply) Act, 1948 clearly shows that the petitioner's need of electricity is far in excess of 25 MW on account of which the condition relating to minimum charges contained in Clause 16(c) is not at all onerous. It is stated that instead of utilising self generated electricity the petitioner can take the entire 25 MW contract demand under the agreement from the R. S. E. B. It has also been said on behalf of the respondents that other consumers whose contract demand is 25 MW or more are not similarly situated inasmuch as even those like Hindustan Zinc Ltd. of Udaipur whose agreement is X/12 dt. Feb. 18, 1986 have not been given consent for self generation of electricity in as favourable terms as the sanction granted to the petitioner. It was pointed out by Dr. Singhvi that self generation by Hindustan Zinc Ltd. is with use of diesel and not the cheaper thermal power as in the case of petitioner. These are relied on as distinguishing features to justify the classification of petitioner alone in a distinct category.

26. It is evident from the pleadings that the petitioner has clearly pleaded that there is no other heavy consumer with contract demand of 25 MW or more on whom a similar onerous condition for payment of minimum charges has been imposed, and some instances have also been given. The R. S. E. B. has rest content with denying this allegation and pleading. The features of distinction already indicated have been mentioned without indicating any other consumer subjected to a similar condition as the petitioner. It is, therefore, beyond controversy that petitioner is the only consumer subjected to payment of minimum charges at nearly three times the normal rate charged from any other heavy industry consuming the contract demand of 25 MW or more. These pleadings and facts constitute a prima facie case of discrimination for raising the plea based on Article 14 of the Constitution and unless it is shown that the factors relied on by the R. S. E. B. to place the petitioner in a separate class by itself have a rational nexus with the object of classification, there is no escape from the conclusion of hostile discrimination. It cannot be accepted that the pleadings and the material on record are not sufficient to enable examination of the petitioner's allegation of hostile discrimination on merits.

27. It may here be mentioned that Article 14 applies at the threshold to a contract made by a "State" in order to give equal opportunity to all similarly placed for entering into the contract and this also means that all such persons are entitled to enter into the contract on similar and not unequal terms and conditions. In other words, no discrimination can be made between similar persons by specifying unequal terms and conditions between them. There would be violation of Article 14 if there be either exclusion of any one similarly placed or unequal terms and conditions are prescribed for any of them, in either situation there is hostile discrimination at the threshold to which Article 14 is attracted.

28. We have already indicated the relevant statutory provisions in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 under which the Board is under an obligation to supply electricity to any consumer on his requisition subject to compliance of conditions imposed on the consumer and the further duty of the Board is to treat equally all similarly placed consumers. This is obvious from these statutory provisions even without the aid of Article 14 of the Constitution. The concept of minimum charges which has already been indicated and the maximum limit prescribed for the same provide the guidelines within which the condition of payment of minimum charges by a consumer is to be specified by the Board. If this be the true concept of minimum charges, the correctness of which cannot be doubted, then the factors on which the separate classification of petitioner alone is based must bear some reasonable nexus with this concept. Obviously, the object of requiring an undertaking to pay minimum charges is to recover from the consumer the permissible return on the capital expenditure incurred by the Board for supply of electricity to the consumer and the maximum has also been fixed by the statute as 15% of the cost incurred by the Board. This payment is required to be made only when the cost of electricity consumed is not sufficient to give the necessary return to the Board for the additional burden undertaken by it for supply of electricity to that consumer. These are all facts within the special knowledge of the Board, but no attempt has been made by the R. S. E. B. to show that the minimum charges to be recovered under the impugned Clause 16(c) are within the permissible statutory limits and that the additional burden undertaken by the Board for increase of the contract demand from 15 M W to 25 M W in the case of the petitioner is such that it justifies recovery of minimum charges at three times the normal rate laid down for other consumers of 25 MW or more, electricity.

29. The capacity of self generation and the other factors like source of supply, pattern of generation, competing demand of supply position and the uses for which it is earmarked, by itself, without any further material relating to any of these factors to show that any one of them has a rational nexus with the object of recovery of minimum charges from the petitioner, are obviously not sufficient to provide a sound basis for reasonable classification of the petitioner alone differently in this manner.

30. The argument of Dr. Singhvi that the petitioner's need of electricity in excess of 25 MW since its capacity for self generation alone is 45 MW, permits separate classification of the petitioner, is untenable. It has been mentioned earlier that the petitioner has two captive power plants for self generation whose total capacity is 45 MW. Sanction of the Board u/s 44 of the Electricity (Supply) Act, 1948 was given in 1966 for 35 MW as a result of which the first captive power plant was set up by the petitioner in 1969. This was even before the initial agreement of the petitioner with the Board on Feb. 8, 1973 for supply of 6 MW of electricity to the Fertilizer plant. Admittedly the petitioner's capacity of self generation of 35 MW since 1969 was not considered relevant while specifying the minimum charges to be paid by the petitioner and the normal rate of 130 units

per KVA was, therefore, prescribed for the petitioner in 1973 and thereafter also in 1974 when the contract demand was increased to 15 MW. In 1981 when the impugned Clause 16{c} was inserted by the Board in the supplementary agreement dt. Dec. 15, 1981 the petitioner's capacity for self generation remained the same i.e. 35 MW. It was only thereafter in 1983, as a result of the consent given by the Board in June, 1982 that the petitioner's capacity for self generation was increased by an additional 10 MW. These facts clearly indicate that the petitioner's capacity for self generation of electricity was not considered a material circumstance even by the Board while prescribing the normal rate of 130 units per KVA as the minimum charges payable by the petitioner under the agreement of 1973 and the supplementary agreement of 1974. In 1981 when the higher rate was prescribed the capacity for self generation had not increased. Moreover, the capacity for self generation by a consumer has no rational nexus with the object requiring payment of the minimum charges, the concept of which has already been indicated. Accordingly, it cannot be a relevant factor to permit classification of consumers on that basis. For this reason the conditions under which sanction was granted to the petitioner and other similar consumers for self generation of the electricity under S. 44 of the Electricity (Supply) Act, 1948 do not require any further consideration.

31. Dr. Singhvi argued that the petitioner's need of electricity being in excess of 25 MW, the petitioner cannot reduce the contract demand and utilise the self generated electricity causing loss to the Board by consuming lesser electricity supplied by the Board. The obvious answer to this contention is that the provision for payment of minimum charges is made only to protect the Board in this respect and the extent of protection given is provided in the statute as already indicated. The petitioner's capacity for self generation of electricity is not a relevant factor to permit a higher rate being prescribed for petitioner alone. If there be any contravention of the conditions subject to which sanction has been given u/s 44 of the Electricity (Supply) Act, 1948 to the petitioner for self generation then the remedy for the Board would be to proceed against the petitioner for such violation if any, but that cannot be a permissible ground to claim higher minimum charges from petitioner alone,

32. In our opinion, the material brought on record by the two sides is sufficient to indicate that the petitioner has shown that the requirement from it alone of payment of minimum charges at approximately three times the rate prescribed for other heavy consumers of electricity with a contract demand of 25 MW or more is without any rational basis or any valid reason which justifies this additional and onerous liability being imposed on the petitioner alone. Not only Article 14 of the Constitution, but even the statutory provisions already indicated which lay down the obligations and duties of the Board require the Board to treat all similar consumers equally. All the facts relating to every consumer of electricity in the State are within the special knowledge of the R. S. E. B. which could easily furnish particulars relating to each consumer, if it be possible to rebut the allegation of hostile discrimination. This was incumbent upon the R. S.

E. B. since it is one of the contracting parties in the case of every consumer in the State. The best evidence on the point is available with the R. S. E. B. and should have been produced by it irrespective of the question of burden of proof. Failure of the R. S. E. B. to place any material before us, other than that already mentioned, only shows that there is no other material present to support such a classification. We have already indicated that the material brought on record does prove hostile discrimination as alleged by the petitioner and found proved even by the learned single Judge. In our opinion, the pleadings of the petitioner and the material present on record is sufficient to discharge the petitioner's onus to prove hostile discrimination by the R. S. E. B. and the R. S. E. B. has been unable to rebut the same by showing any reasonable basis for isolating the petitioner alone in this manner.

33. It is also significant that the R. S. E. B. issued a Notification dt July 2, 1985 in exercise of the power conferred by Section 49 of the Electricity (Supply) Act, 1948 to increase the minimum charges payable by other similar heavy consumers to 200 units per KVA per month of the contract demand instead of 130 units per KVA specified earlier from the billing month of Aug. 1985, but by a subsequent Notification dt. Sept. 17, 1985 this increase in the minimum charges was withdrawn retrospectively resulting in the minimum charges continuing to be prescribed at the rate of 130 units per KVA per month of contract demand for all other heavy consumers except the petitioner. This indicates that even the increase to 200 units per KVA from 130 units per KVA as late as 1985 was not considered fit and reasonable for the purpose of recovery of minimum charges in case of all other similar consumers like the petitioner. This being so, there is hardly any rational basis to hold that the far more harsh and onerous condition of 372.30 units per KVA imposed on the petitioner alone at an earlier date is reasonable and not discriminatory. In our opinion, this fact also supports our conclusion that the case of hostile discrimination set up by the petitioner has been made out.

34. The unilateral act of the R. S. E. B. in making the above increase in the rate of minimum charges by the aforesaid Notification dt. July 2, 1985 and its subsequent withdrawal by Notification dt. Sept. 17, 1985 further shows that fixation of the terms and conditions of supply including the condition relating to minimum charges is within the exclusive domain of the R. S. E. B. which it does in exercise of its statutory powers already indicated. In such a situation there is no scope for the view that it is a purely contractual term fixed by negotiation with the consumer in respect of which a writ petition does not lie.

35. The recent judgment of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, also supports the conclusion that the writ jurisdiction under Article 226 of the Constitution is available to declare that a term of such a statutory contract is not enforceable where there was no option to the petitioner except to execute the contract on the terms and conditions unilaterally prescribed by the other side for

entering into the contract. No doubt that is a case relating to an unconscionable term in contract of employment which was held to be void as being violative of Article 14. However, the principles laid down in that decision are instructive and indicate that it is permissible to strike down as invalid an unconscionable term in a contract entered into which a Corporation which is "State" within the meaning of the expression in Article 12 of the Constitution if that term is violative of Article 14 of the Constitution. The nature of contract whether it is a service contract or of supply of any commodity is immaterial for application of the principles laid down in that decision. That decision also deals with the "contract of adhesion" and indicates the circumstances in which a contract falls in that category. The test indicated briefly is that where freedom of contract is absent and the weaker party had no realistic choice as to its terms, then a contract containing an unconscionable term may be a contract of adhesion. Dr. Singhvi contended that contracts of adhesion are mostly standard form contracts where there is no scope for negotiation and the consumer of goods and services is required to "take it or leave it" as it is. It is unnecessary in the present case to go into these further details and to decide whether the present is an instance of a contract of adhesion, since the findings already recorded by us are sufficient to apply the principle enunciated in this decision. We have already indicated that the condition in Clause 16(c) of the supplementary agreement dt. Dec. 15, 1981 requiring the petitioner to pay minimum charges in excess of the normal rates prescribed for other similar heavy consumers contravenes certain statutory provisions contained in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 in addition to violating Article 14 of the Constitution. This finding alone is sufficient to apply the above Supreme Court decision to declare the said Clause 16(c) invalid to this extent and, therefore, not enforceable against the petitioner.

36. For the above reasons it must be held that the impugned Clause 16(c) contained in the supplementary agreement dt. Dec. 15, 1981 to the extent it fastens the liability on petitioner to pay minimum charges in excess of the normal rate of 130 units per KVA prescribed for other similar heavy consumer, contravenes the aforesaid statutory provisions, particularly Section 22 and Clause VI of the Schedule to the Indian Electricity Act, 1910 read with Section 26 and Sub-sections (1) and (4) of Section 49 of the Electricity (Supply) Act, 1948; and it also contravenes the petitioner's right of equality under Article 14 of the Constitution. Clause 16(c) is, therefore, invalid to this extent and is not enforceable against the petitioner.

We may, however, add that, this shall not result in the contract with the petitioner being construed as not containing any undertaking for payment of minimum charges but the contract shall be construed as containing the petitioner's undertaking to pay minimum charges at the normal rate of 130 units per KVA prescribed for other similar consumers. This relief is in addition to the relief already granted by the learned single Judge on the basis of concession made by the R. S. E. B. of proportionate reduction in the demand of minimum

charges to the extent of power cuts. The bills issued by the R. S. E. B. to the petitioner for recovery of minimum charges are to be revised in this manner and the petitioner will also get the consequential benefits, if any. The appeal is allowed in this manner. In the circumstances of the case, we direct the parties to bear their own costs.