(1965) 06 CAL CK 0012

In the Calcutta High Court

Case No : Civil Revision Case No. 1150 (W) of 1961

Dhirendra Nath Paul APPELLANT

Vs

District Magistrate RESPONDENT

Date of Decision : 17-06-1965

Acts Referred:

Constitution of India, 1950 — Article 19(5), 19(5), 19(6), 226
Electricity (Supply) Act, 1948 — Section 12, 13, 18, 19, 19(1)
Electricity Act, 1910 — Section 2, 26, 27, 28, 3
Electricity Lighting Act, 1882 — Section 19, 20
English Electric Lighting Act, 1909 — Section 6(1)
English Electricity Act, 1947 — Section 1(1), 37(2), 37(3), 37(8)
General Clauses Act, 1897 — Section 21
Income Tax Act, 1922 — Section 37(2)

Citation : (1967) 2 ILR (Cal) 314

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Ranjit Kumar Banerjee and Dhruba Kumar Mukherjee, for the Appellant;Smriti Kumar Roy Chowdhury, Sudhir Kumar Basu and Chuni Lal Ganguly, for the Respondent

Judgement

D. Basu, J.—This Rule under Article 226 of the Constitution is directed against the notice No. M/572, dated October 13, 1961 (annex. D to the petition), issued by the West Bengal State Electricity Board (Respondent No. 2), calling upon the Petitioners to execute an agreement by November 30, 1961, for supply of electricity by the Board on payment of charge according to the standard tariff of the Board, since Government had revoked its sanction u/s 27 of the Indian Electricity Act, 1910, by which the Calcutta Electric Supply Corporation (added Respondent No. 4) had been authorised to supply electricity to the Petitioners previously.

2. The Petitioners are residents of the area called Ghosepara within the Bally Union Board which is to the west of and is separated from the Bally Municipality by a Railway line. The Bally Municipality is within the ''area of supply'' covered by

the licence of the Calcutta Electric Supply Corporation (hereinafter referred to as the ''Corporation''), but the Bally Union Board is not. By its letter No. 11168-70 of November 28, 1935, (annex. A to the petition), however, the Government of West Bengal authorised the Corporation, u/s 27 of the Indian Electricity Act, 1910 (hereinafter referred to as the Act of 1910), to supply electricity to ten premises in Ghosepara within the Bally Union Board even though such premises were situated outside the area of supply under the Corporation''s licence under the Act. The six Petitioners, along with others, were thus being supplied electricity by the Corporation. The concluding paragraph of this sanction u/s 27 (annex. A) stated:

This sanction will hold good till such time as any licensee whose area of supply may cover the premises in question is in a position and prepared to supply energy to those premises.

3. It would be useful to refer to the relevant portion of Section 27 of the Act of 1910 at this stage:

Notwithstanding anything in this Act, the State Government may, by order in writing and subject to such conditions and restrictions, if any, as it thinks fit to impose, authorise any licensee to supply energy to any person outside the area of supply....

Provided, fourthly, that, save as aforesaid, the provisions of this Act shall apply in the case of any supply authorised under this section as if the said supply were within the area of supply.

4. Since then, the Petitioners had been getting their supply of energy from the Corporation, after executing an agreement with them. After the West Bengal State Electricity Board (hereinafter referred to as ''the Board''), was constituted under the Electricity (Supply) Act, 1948 (hereinafter referred to as ''the Act of 1948''), the Petitioner came to learn that the Board had framed a scheme for supplying energy to the Petitioners area, in place of the Corporation, In reply to the Petitioners query, the Corporation informed them, by their letter of September 18, 1961 (annex. B), that the Board had decided to supply energy to the Petitioners with effect from November 1, 1961 and that since the Government had rescinded the order u/s 27 (annex. A) authorising the Corporation to supply energy to the Petitioners, the Corporation had ''no option but to terminate our Agreement with you.

5. The Petitioners representation (annex. C) to the Government (Respondent No. 3), requesting that the Corporation should be allowed to supply energy to the Petitioners inasmuch as areas even to the further west of Ghosepara, in Lilooah and Belgachia, had been allowed to be retained within the licensed area of the Corporation, has been of no avail. Then came the impugned notice from the Board (annex. D) calling upon the Petitioners to execute fresh agreements with the Board, agreeing to pay the charge according to the standard tariff which is printed in a red pamphlet, which is at annex. A to the counter-affidavit.

6. The Petitioners'' complaint is that the tariff sought to be imposed upon the Petitioners by the Board, according to the red pamphlet, is more than double of the rate payable by them hitherto to the Corporation and this is shown by the comparative table at annex. F. Since this fact is not denied in the counter-affidavit of the Board, it may be stated at once that the Petitioners case on this point, namely, that the Board is demanding a rate more than double the rate of the Corporation is established.

7. The Petitioners urge that though it may be within the competence of the Government to revoke its sanction u/s 27 in favour of the Corporation or of the Board to undertake to supply energy to the Petitioners, the Board cannot charge any rate higher than that charged by the Corporation inasmuch as the Act of 1948 under which the Board has been set up does not empower the Board to impose uneconomic rates upon the consumers. Their further case is that since the Board has replaced the Corporation only in respect of the residential area of the Bally Union Board, allowing the Corporation to continue to supply energy at their existing rates to the industrial area of that very Union Board, there has been a discrimination against the Petitioners, because consumers within the latter area are still being supplied energy at a rate less than half of the rates demanded by the Board from the Petitioners.

8. The Petitioners, accordingly, pray that an order in the nature of mandamus should issue restraining the Respondents from giving effect to the impugned notice.

9. In the counter-affidavit filed on behalf of the Government (Respondent No. 3), it is stated that they had to withdraw the sanction u/s 27 of the Act of 1910 since the Board had framed a scheme for supplying energy in the area in which the Petitioners reside, in place of the Corporation.

10. The Board, in its counter-affidavit, states that the Ghose para area in which the Petitioners reside, being outside the ''area of supply'' of the licence of the Corporation, the latter was authorised, u/s 27 of the Act of 1910 by the Government to supply energy to the Petitioners. At first such sanction was accorded with respect to 10 premises in that area, but this was extended to 19 houses by successive notifications up to 1940. The condition in the sanction (vide annex. A to the petition) was that the sanction would hold good only till such time as any licensee whose ''area of supply'' may cover the premises in question is in a position and prepared to supply energy to those premises. After the Board was constituted in 1955, under the provisions of the Act of 1948, it became entitled to the powers of a licensee in respect of the entire state. This was provided in Section 26 of the Act which may be mentioned at once:

Subject to the provisions of this Act, the Board shall, in respect of the whole State, 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 purpose of that Act.

11. The Board, thereupon, undertook to supply energy to areas adjoining the Ghosepara area but could not extend its supply to the Ghosepara area as the sanction u/s 27 in favour of the Corporation was in force in respect of that area. Subsequently, when the Board decided to supply energy to the Ghosepara area also ''in the interest of coordinated development of supplying energy to that area'' and had established a system of transmission and distribution of energy, the Government rescinded its sanction u/s 27 and the Board took over the Ghosepara area with effect from November 1, 1961. Since the Government sanction has thus been withdrawn, the Corporation is no longer entitled to supply energy to the Petitioners and the agreement entered into between the two parties in this behalf has come to an end. The Board is also entitled, under the statutory provisions, to call upon the Petitioners to execute fresh agreements with the Board. The impugned notice, calling upon the execution of such agreement cannot, accordingly, be interfered with.

12. As regards the rate, the Board states that the rate demanded from the Petitioners is the standard Howrah-Amta rate fixed by the Board and that, since that rate has been enforced in the entire area of supply in the district of Howrah, including the Ghosepara area, the Board has not committed any discrimination against the Petitioners on the other hand, the Board cannot offer any reduction to the Petitioners from that rate, without being guilty of showing undue preference to the Petitioners which is prohibited by the proviso to Section 49 of the Act of 1948. It is also urged that the Petitioners have no right to question the rate fixed by the Board even though it is admitted that the rate fixed by the Board is higher than that charged by the Corporation from the Petitioners (vide para. 4(h) of the counter-affidavit).

13. The Corporation, in its affidavit, states that it had no other alternative than to terminate its agreement with the Petitioners since the Government had rescinded its sanction u/s 27. The Rule should, accordingly, be discharged with costs as against the Corporation since it has been unnecessarily impleaded.

14. In a supplementary affidavit filed on behalf of the Petitioners on August 21, 1964, the following new points have been taken:

(a) That the order rescinding the sanction u/s 27 is ultra vires inasmuch as the consent of the existing licensee, i.e. the Corporation, has not been obtained by the Government, as required by Section 19 of the Act of 1948.

(b) That the Board is not entitled to fix rates without framing regulations, as referred to in Sections 49 and 79 of the Act of 1948.

(c) That the letter in annex. E. applying the Howrah-Amta Grid rate has not been duly authenticated in accordance with Section 13 of the Act of 1948, as it is signed by the Divisional Engineer.

15. The foregoing contentions have been denied in the affidavits-in-opposition filed to the supplementary affidavit of the Petitioners.

16. The first point to be determined is whether the withdrawal of the sanction u/s 27 by the Government is ultra vires.

17. Though in the original petition, the Petitioners conceded that Government had the power to revoke the sanction and proceeded against the Board in the matter of fixation of an excessive rate on the assumption that the revocation of the sanction u/s 27 in favour of the Corporation was valid, in the supplementary affidavit of August, 1964, the Petitioners went to the root of things by challenging the validity of the revocation order itself and that case has been met by the Respondents by supplementary counter-affidavits.

18. Section 27 of the Act of 1910 does not say anything about revocation of the sanction; but in view of Section 21 of the General Clauses Act, 1897, the power to rescind the sanction is implied under like conditions. It has been seen that the sanction u/s 27 is founded on the fact that a particular area is not, for the time being, covered by the ''area of supply'' of an existing licensee. In order to make a temporary arrangement for supplying electric energy to the residents of that area, therefore, the sanction empowers the Government to authorise the licensee of an adjoining area to supply energy to the uncovered area, ''as if the said supply were made within the area of supply'' under the licence granted to that licensee. It is clear, therefore, that as soon as a new licensee comes into the field or the licence of the adjoining licensee is widened so as to cover the area in question by a ''licence'', Government would have the power to rescind the sanction granted u/s 27 in favour of the adjoining licensee This has happened by the very enactment of the Act of 1948 which authorises the establishment of the Board as a licensee in respect of the whole of the State (Section 26). After the establishment of the Board in 1955, the Board decided to undertake the supply to the Petitioners Ghosepara area and moved the Government to revoke the sanction u/s 27 in favour of the Corporation (vide Board''s letter No. AX 14/2/70502) annexed to the counter-affidavit of the Corporation and that is why the sanction has been revoked by the Board. The notification of revocation (No. 2301-MP/3L-37/60/15.6.61), which was produced before me by Mr. Roy Chowdhury, also recites that the revocation was being made in view of the Board''s capability in supplying energy to the Petitioners:

And whereas the West Bengal State Electricity Board has established a system of transmission and distribution of energy outside the area of supply of the said licensees (i.e. the Corporation) and is in a position to supply energy for domestic purposes to the persons mentioned in the said orders at their respective premises referred to above.

19. So far it does not appear that any statutory conditions are attached to the revocation or that the consumers have any say in the matter. It has, however, been urged on behalf of the Petitioners that Section 19(1) of the Act of 1948 lays down certain conditions subject to which only the Board may take up any area included in the area of supply of an existing licensee and that Clause (b) of the proviso to this section requires that this can be done only with the consent of the

existing licensee except where it is shown that the existing licensee is unwilling to supply energy to the area in question on reasonable terms. The relevant portions of the clause are

The Board may, subject to the provisions of this Act, supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned under chapter V is in force;

Provided that the Board shall not

* * * *

(b) supply electricity for any purpose to any person not being a licensee for use in any part of the area of supply of a licensee without the consent of the licensee, unless

(iii) the licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable term.

20. If this provision were applicable to the facts of this case, there is no doubt that it has been violated since the Corporation has never expressed its inability or unwillingness to serve the Petitioners but has been obliged to stop its supply by reason of the revocation of the sanction in their favour. That its terms were reasonable is also beyond question. It appears, however, that this provision upon which great emphasis was laid by Mr. Banerjee on behalf of the Petitioners, cannot be invoked to urge that without the consent of the Corporation, it could not be ousted either by the Board or by the Government at the instance or for the sake of the Board.

21. The reason is that this proviso applies only where the person to whom the Board seeks to supply is resident within the ''area of supply of a licensee''. No doubt, the Corporation holds a licence, but the question is whether Ghosepara is within its ''area of supply. Section 2(6) of the Act of 1948 defines a ''licensee'' as follows:

''Licensee'' means a person licensed under part II of the Indian Electricity Act, 1910, to supply energy, or a person who has obtained sanction, u/s 28 of that Act to engage in the business of supplying energy, but, the provisions of Section 26 of this Act notwithstanding, does not include the Board.

22. As I have stated, the Corporation is the holder of a licence under the Act of 1910. That licence, however, does not include Ghosepara within the area of supply of that licence. The expression ''area of supply'' is not defined in the Act of 1948; hence, we are led to the definition of that expression in Section 2(b) of the Act of 1910, by reason of Section 2(15) of the Act of 1948, which says that other expressions have the meanings respectively assigned to them in the Indian Electricity Act, 1910.

23. Now area of supply is defined in Section 2(b) of the Act of 1910 as ''the area

within which alone a licensee is for the time being authorised by his licence to supply energy''.

24. There is not the least doubt that Ghosepara is not included within the area in which the Corporation was authorised to supply energy by virtue of the licence granted to the Corporation. And that is the very reason why a specific sanction of the Government u/s 27 was required to enable it to supply energy to Ghosepara. The application of the first paragraph of Section 27 is based on the fact that Ghosepara was not within the ''area of supply'' of the Corporation as a licensee. It has, however, been urged by Mr. Banerjee that as soon as such sanction had been accorded, Ghosepara became an ''area of supply'' of the Corporation as a licensee, within the meaning of proviso (b) to Section 19(1) of the Act of 1948. This argument is founded on the 4th proviso to Section 27 of the Act of 1910, which has already been reproduced. This proviso says that after a sanction u/s 27 has been accorded in respect of a particular area

The provisions of this Act shall apply in the case of any supply authorised under this section as if the said supply were made within the area of supply.

25. The fiction referred to in the latter part of the 4th proviso is necessary in order to import the rights and obligations of a licensee under the provisions of the Act in respect of the area for which the sanction has been accorded. Without such fiction, the adjoining licensee could not have been made any legal obligations whatever in respect of the sanctioned area, inasmuch as the obligations under his licence do not extend to such area. The question is whether this proviso converts such area into an ''area of supply'' as defined in Section 2(b) of the Act of 1910. The answer must be in the negative, since

(i) The definition itself does not say that when a sanction u/s 27 has been accorded, the definition would include such area as well;

(ii) The 4th proviso in Section 27 does not say that the area to which the sanction relates shall be deemed to be included within the ''area of supply'' of the licensee but only introduces the fiction for a specific purpose, namely, the application of the provision of the Act as regards such area even though it is not included within the expression of ''area of supply'' as defined in Section 2(b).

(iii) The words as if introduces a fiction for a limited purpose, vide Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, .

26. This conclusion is also supported by the definition of ''licensee'' in Section 2(6) of the Act of 1948, which has been referred to earlier. It includes not only a person to whom a licence has been granted under the Act of 1910, but also a person to whom sanction u/s 28 of that Act has been accorded. Section 28 authorises the granting of sanction to a non-licensee, i.e. a person who holds no licence for any area at all, under the circumstances specified in that section. Section 28 has nothing to do with the sanction u/s 27 accorded to the holder of an existing licence in respect of an area outside his licence. If such person were

intended to be included within the definition of licensee under the Act of 1948, Section 2(6) would not have mentioned Section 28 only it would have mentioned Section 27 as well. It is clear, therefore, that the area in respect of which sanction has been accorded u/s 27 cannot be an ''area of supply of a licensee'' within the meaning of Section 19(1)(b) of the Act of 1948. If this conclusion be correct, no question of obtaining the consent of the Corporation before revoking its licence or before the Board''s undertaking to supply energy in Ghosepara in place of the Corporation can possibly arise. Hence, the revocation cannot be held to be ultra vires on the ground of contravention of Section 19(1)(b). The Boards action is also not impeachable on the same ground.

27. It has next been contended by Mr. Banerjee, somewhat widely, that the whole scheme and object of the Act of 1948 which sets up the Board is to achieve economy not only in the cost of production but also in the prices to be charged from the consumers and that, accordingly, the Board cannot take up any particular area if it means higher prices to the consumers in comparison with the rates charged by an existing supplier and for the same reason, the Government is not entitled to revoke its sanction u/s 27 in any such case. At the outset, it must be observed that even though this argument may be advanced against the action of the Board, it cannot be urged as a ground for assailing the order of revocation of the sanction u/s 27 of the Act of 1910, for, the latter provision is not controlled by anything in the Act of 1948.

28. As an argument against the extension of the Board''s supply to Ghosepara, Mr. Banerjee relies, primarily, upon the preamble of the Act of 1948, which says

Whereas it is expedient to provide for the rationalisation of the production and supply of electricity, for taking measure conductive to electrical development and for all matters, incidental thereto.

29. It may be said at once that Mr. Banerjee is right in his contention that the concept of rationalisation involves the incident of lower prices to the consumer. The word ''rationalisation'', is a technical expression of industrial economics which has entered into lexicon after the First World War. One central purpose is visible amongst all literature relating to this term since its inception. In the World Economic Conference of 1957, held in Geneva, it was explained as putting recent methods of technique and organisation into industry. Since the preamble in question uses the word ''rationalisation'' in juxtaposition to the words ''production and supply'', it is dear that rationalisation has been used in this initial sense of avoidance of waste in the manner of production and supply of electricity. There is a consensus of opinion amongst advocates of rationalisation that while its object as regards the producer is lesser cost, to the consumer it means lower price. It is evident that avoidance of waste by the producer, elimination of uneconomic competition achievement of minimum cost would be meaningless to society if it meant higher price to the consumer. As Dr. C.S. Myers in his Business Rationalisation (p. 56) points out, while rationalisation means less waste and greater productivity in manufacture, by the introduction of

price standardisation and simplification to the consumer, it brings in the obvious result of ''reduced selling price and enhancement of purchasing power''. It is interesting to note that the element of ''economy'' is highlighted in Section 1(1) of the English Electricity Act, 1947, on which our Act is modelled. It says

There shall be established an Authority...and it shall be the duty of that Authority as from the vesting date to develop and maintain an efficient co-ordinated and economical system of a electrical supply...and for that purpose

(b) to provide supplies of electricity for consumers for whom the British Electricity Authority are required by any provision of this Act.... to provide such supplies.

30. Closely following the above is the language of Section 18(c) of our Act of 1948 which authorises the Board to take up the supply of energy to ordinary consumers. It says

Subject to the provisions of this Act, the Board shall be charged with the general duty of promoting the co-ordinated development of the generation, supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in area not for the time being served or adequately served by any licensee and without prejudice to the generality of the foregoing provisions it shall be the duty of the Board

(c) to supply electricity as soon as practicable to any other licensee or person requiring such supply and whom the Board may be competent under this Act to supply.

31. The Board, in its counter affidavit, states that it has taken up Ghosepara in the interest of co-ordinated ''supply'' inasmuch as it is already supplying adjoining areas under its Rural Electrification Scheme (vide the layout plan on the record). Mr. Banerjee argues that, in the interests of co-ordinated supply, the Board cannot override the other conditions imposed by Section 18. One of these is that the area in question must not be served or adequately served by an existing ''licensee''. In my opinion, this condition, relied upon by Mr. Banerjee, is not applicable to the facts of the instant case inasmuch as the words ''served by any licensee'' refer to a state of affairs identical with that referred to in Sub-section 1(b) of Section 19, namely, where the area in question is included within the area of supply of a licence and not where a licensee has been sanctioned to supply energy to an area outside its licensed area u/s 27. This conclusion is supported by para. (iii) of Section 19(1)(b). Even assuming that the condition in Section 18 includes a reference to an area sanctioned u/s 27, as soon as that sanction is withdrawn, it must be held that that area is not being served by any licensee. If, therefore, the withdrawal of that sanction cannot be annulled, this condition cannot fetter the Board.

32. Mr. Banerjee is, however, right in urging that the condition of ''economy'' sets an overall limitation upon the projects of the Board not only by the preamble but

by the express provisions of Section 18. Mr. Banerjee has reinforced his argument by the admitted fact (para. 4 of supplementary counter-affidavit of the Board) that the Board is supplying electricity to Ghosepara, not by generating itself, but by purchasing it from the Corporation itself. Mr. Roy Chowdhury, on behalf of the Board, refers to Section 43 of the Act which empowers the Board to purchase energy produced by some other person. This, however, would be no answer to Mr. Banerjee if economy be an overall limitation on the statutory powers of the Board; the Board may have the power to purchase, but it cannot thrust itself upon the consumers in a particular area with purchased energy if that means higher cost to the Board itself and a higher price to the consumer. The real answer to Mr. Banerjee''s argument seems to be that there is a stage and a machinery provided by the Act itself, when and by means of which a consumer may thwart the intrusion of the Board into an area, on the ground of contravention of any of the conditions in Section 18. As Clause (a) of Section 18 shows, the primary duty of the Board is to prepare a ''scheme under chap. V'' and Section 19(1) authorises it to undertake supply to a non-licensee consumer only if such person is resident ''in any area in which a scheme sanctioned under chap. V is in force''. Now, chap. V lays down how a scheme has to be prepared and published by the Board and provides for a consideration of the objections, if any, raised against the scheme by persons interested not only by the Board but also by an authority superior to it. It is obvious that at this stage it is open to the consumers and other interested persons to contend that the proposed scheme violates the conditions imposed by Section 18. After the scheme has once been sanctioned, it will not be open to the consumer to set up Section 18 against the Board, though, of course, he may assail the price charged, under the provisions of Section 49, as far as it admits of a cause of action, as we shall presently see. That there are provisions in the Act which are mandatory and yet cannot be enforced in a Court of law would appear from the unreported judgment of the Supreme Court in Amalgamated Electricity Co. v. Bathena Unreported judgment in Civil Appeals Nos. 590-1 of 1963. In para. 8 of the petition itself, it is admitted that the Board has taken up Ghosepara in pursuance of a scheme framed by the Board for supplying energy in that area and this is affirmed in para. 8 of the counter-affidavit of the Government. The Petitioner should have raised their objections against the scheme on the ground of economy at that stage and pursue them up to the ultimate remedy as provided by the Act. As that has not been done and on the contrary, the Petitioners have been enjoying the benefit of the supply offered by the Board since the revocation of the sanction in favour of the Board, the Petitioners are left to their remedy, if any, against the rate imposed by the Board.

33. We are thus brought to Section 49 of the Act of 1948, which says:

Subject to the provisions of this Act and of any regulations made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purposes for which it is required.

Provided that in fixing any such terms and conditions the Board shall not show undue preference to any person.

34. It is evident that in the matter of price-fixing, the Board has its discretion, limited only by certain conditions specified in this section.

35. The first condition is that in the exercise of its discretion the Board must take into consideration the nature, geographical position and purposes of the supply to different consumers. It has, however, been held by the Supreme Court in The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, that the expression ''having regard to'', as explained by the Judicial Committee in Ryots of Garabandho v. Zamindar of Parlakimedi L.R. 70 IndAp 129 (168), shows that this condition is not justiciable. In other words, the Legislature desires these factors to be taken into consideration by the Board in exercising its discretion in the matter of fixing the terms and conditions of the supply but no consumer is entitled to complain to a Court of law that the Board has failed to take these matters into consideration.

36. The decisions in England and India, however, indicate that a violation of the proviso, that is to say, the fixation of such terms as results in undue preference to a particular consumer or a discrimination against another gives rise to a legal cause of action. It would be profitable, at the outset, to refer to the corresponding provisions of the English statutes which have obviously been looked into in modeling electricity legislation in India.

37. Sections 19 and 20 of the Electricity Lighting Act, 1882, deal with the terms and conditions on which an undertaker may supply energy to consumer. Section 19 says that a person shall

be entitled to supply on the same terms on which any other...person in such part of the area is entitled under similar circumstances to a corresponding supply.

Section 20 then lays down that

the undertakers shall not in making any agreements for a supply of electricity, show any undue preference to any...person, but, save as aforesaid, they may make such charges for the supply of electricity, as may be agreed upon.

Section 37(8) of the Electricity Act, 1947, provides

An area Board, in fixing tariffs and making agreements under this section,, shall not show undue preference to any person or class of persons and shall not exercise undue discrimination against any person or class of persons.

38. English decisions are uniform on the point that if undue preference is shown in contravention of the foregoing statutory mandate, the aggrieved consumer has a legal cause of action A.G. v. Wimbledon (1940) 1 A.E.R. 76 and Electricity Board v. British Oxygen Co. (1956) 3 A.E.R. 199 (H.L.). If undue preference is

established, the consumer is entitled not only to an injunction against the demand in so far as it is preferential A.G. v. Wimbledon (1940) 1 A.E.R. 76, but also to recover the over-payments South of Scotland Electricity Board v. British Oxygen Co. (1959) 2 A.E.R. 225 (233-4) (H.L.).

39. There is nothing in the decision of our Supreme Court in the Mysore Electricity Board case (Supra) which lays down any contrary proposition. In that case, the point for decision was whether a question between a consumer and the State Government or the Board, arising out of Section 49, could be said to be a question within the meaning of Section 76(1) so as to attract the arbitration provision in the latter section. The opinion of the Court was that it was only questions arising under the 1948 Act which came u/s 76(1) and also that a consumer was not entitled to raise a dispute on the ground that the Board had not taken into consideration the geographical position of the consumers in fixing its tariff, u/s 49. The Court did not enter into the question whether a consumer could be said to be included in the expression ''other person'' or that expression had to be construed ejusdem generis with the word licensee. I do not see anything in this judgment saying that even where the consumer can establish that ''undue preference'' has been shown by the Board in contravention of the proviso to Section 49, he shall have no cause of action before a Court of law, contrary to the position under the comparable provisions of the English electricity statutes.

40. We are, therefore, led to the question as to what constitutes ''undue preference'' within the meaning of the proviso to Section 49.

41. In the original affidavit, the Petitioners made the case that there was a violation of the proviso by reason of the fact that the Board had not taken over from the Corporation the entire area of Bally as a result of which some consumers within that area are still enjoying the lower rates charged by the Corporation while higher rate is being charged by the Board. But this cannot be said to be a preference within the meaning of the proviso. There may be a preference within the meaning of the proviso only if the Board is charging different consumers supplied by itself differently without any lawful justification. The proviso would not come into operation on the ground that some other supplier is supplying at a lower rate.

42. In the supplementary affidavit, however, the Petitioners introduced the case that the Board is charging consumers at Barrack-pore at a lower rate than that demanded from the Petitioners. From the copy of the Bill in annex. X in the name of Tincori Chatterjee, it appears that the rate for lights and fans in that area is 28 P. whereas the corresponding rate for lights and fans demanded from the Petitioners at Ghosepara (annex. F) is 34 P. There is no doubt that the difference is appreciable. In para. 5 of the affidavit-in-opposition to this supplementary affidavit, the Board does not deny that the rate charged in the Barrackpore area is lower than that charged from the Petitioners. But it is not mere ''preference'' of any kind and degree that constitutes a violation of the proviso; it must be an

''undue'' preference. There has been a number of decisions in England as to when a preference may be said to be ''undue'' and the following broad proposition may be formulated:

(a) Any preference shown to a consumer for an illegitimate or arbitrary reason is an ''undue'' preference Electricity Board v. British Oxygen Co. Supra (p. 205), e.g. where a lower rate is offered to a consumer to induce him to be a customer of the supplier A.G. v. Long Eaton Council (1914) 2 Ch. 251 (263).

(b) Even though the preference be shown to be on account of a lawful reason; it may be ''undue'' if the differentiation is excessive Supra (p. 205).

On the other hand, nothing is an undue preference where the circumstances are not similar A.G. v. Wimbledon Corporation (Supra). Thus, it is not an undue preference if the supplier charges a consumer at a lower rate on the ground that the cost of supply to the latter is less ibid. Metropolitan Electrical Supply v. Ginder (1901) 2 Ch. 799 (811) and A.G. v. Long Eaton M.D.C. (1914) 2 Ch. 251 (263).

43. If this be said that the decision just cited is one under the English Act of 1882, where there is Section 19 apart from Section 20 (reproduced earlier) and that Section 19 explicitly lays down that the consumers shall be entitled to supply on the same term as any other consumer similarly circumstanced, it must be pointed out that the same view has been taken by the House of Lords under the Act of 1947 where Section 37(8) speaks of ''undue preference'', there being no other provision corresponding to Section 19 of the Act of 1882 vide Electricity Board v. British Oxygen Co. (Supra) approving of A.G. v. Long Eaton (Supra) where it was held that lesser cost may be a legitimate reason for a lower charge. The reason is that the concept of ''preference'' or its counterpart ''discrimination'' implies ''unfavourable treatment'' Kathi Raning Rawat Vs. The State of Saurashtra, . The question of unfavourable treatment, again, can arise only if the two persons are similarly situated so that it can be said that the treatment accorded to the one is unfavourable in comparison with the treatment accorded to the other.

44. In A.G. v. Hackney Corporation (1918) 1 Ch. 372 (394, 398) C.A., the Court of Appeal held that there is no undue preference where the circumstances relating to the supply are not similar. See also the observations in the Long Eaton''s case (Supra), where it was held that the position u/s 20 independently was not different from that u/s 19 of the English Act of 1882 in this respect.

45. In the case before me, it is stated in para. 5 of the affidavit-in-opposition to the supplementary affidavit is that

...So far as the Barrackpore is concerned, power is purchased in bulk from the Calcutta Electric Supply Corporation at a separate point at Barrackpore and the distributing system is localized in and around Barrackpore only whereas the nature of the distribution in Ghosepara, Bally area, is different, which is dependent upon high voltage and low voltage lines in the District of Howrah as indicated above.

46. Though this statement is somewhat inartistically drawn up and the element of cost is not explicitly mentioned, it is clear that the plea in justification of the lower rate at Barrackpore is that the system of supply in the two areas is different, namely, that though at both places the Board obtains the energy by purchase from the Corporation, the points at which they are supplied for Bally and for Barrackpore are different and that the Board has offered a lower rate because it is more advantageous to the Board to obtain the energy for supply in that area. If that be so and the different rate charged from the Petitioners at Bally be not prompted by any illegitimate reason of which there is no allegation or proof on behalf of the Petitioners, the preference of the Barrackpore consumers cannot be said to be ''undue'' A.G. v. Hackney Corporation (1918) 1 Ch. 372 (394, 598) C.A. There is no allegation of any preference or discrimination as between the Petitioners and other consumers in the Ghosepara area who have been brought under the supply from the Board after replacing the Corporation. Hence, it cannot be held that there has been any undue preference actually shown within the meaning of the proviso in the facts of the instant case.

47. There is, however, a stronger ground urged by Mr. Banerjee on which the Petitioners are entitled to succeed.

48. It has been that the power of the Board, under the first part of Section 49, to supply electricity to a non-licensee consumer under such terms, as may be fixed by it is subject to two limitations:

(a) The provisions of the Act bearing on the subject:

(b) ''Any regulations made in this behalf.

Any breach of the first limitation has not been urged in this case.

49. The Petitioners, however, contend that the regulations deferred to in Section 49 are the regulations to be framed by the Board itself, in exercise of its power u/s 79(j) of the Act and that, the framing of such regulations is a condition precedent to the power of the Board, u/s 49, to fix its terms for supply to the non-licensee consumer and that since no regulations have been framed at all u/s 79(j) before fixing the tariff in the red pamphlet and applying them to the Petitioners, the demand of the Board that the Petitioners must accept these terms has become ultra vires and illegal. Section 79(j) is as follows:

The Board may make regulations not inconsistent with this Act...for all or any of the following matters, namely,

(j) Principles governing the supply of electricity to persons other than licensees u/s 49.

50. It is obvious that since the word ''may'' is used, the exercise of the power to make such regulations is not, prima facie, obligatory. The words ''any

regulations'' may also be literally construed as ''regulations, if any''. But the literal interpretation is not conclusive in such cases and permissive words such as ''may'' are construed by the Courts as obligatory, having regard to the context or the object of the statute which discloses a contrary intention. As Talbot, J. observed in Sheffield Corporation v. Luxford (1929) 2 K.B. 180 (183):

''May'' does not mean ''must'', ''may'' always means ''may''.

''May'' is a permissive or enabling expression, but there are cases in which for various reasons as soon as the person who is within the statute is entrusted with the power, it becomes his duty to exercise it.

51. We must, therefore, see whether there is any special reason for holding that the Board must use its power to make regulations u/s 79(j), before it can legitimately exercise its power u/s 49.

52. The leading case on the subject is R. v. Bishop of Oxford (1880) 5 A.C. 214, where it was observed that a duty to exercise a power may be construed from permissive words where the general scope and object of the statute requires such a construction. In particular, whenever the power has been conferred to effectuate a legal right of an individual, there arises a duty on the part of the done of the power to exercise it for the benefit of the person who has the right. The proposition has been put conversely by our Supreme Court in the case of The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, , namely, that where the requirement is intended for the protection of the right of liberty or property of an individual and consequently, by reason of non-exercise of the power or non-fulfillment of the requirement, such right would be affected, the requirement must be construed as mandatory. Similar will be the construction where otherwise the purpose of the provision would be defeated State of Uttar Pradesh Vs. Jogendra Singh, .

53. It is, therefore, to be seen why the power to make regulations laying down the principles governing the supply of energy to non-licensees u/s 49 has been conferred by the Legislature, Section 3 of the Act of 1910 which authorises a licensee to supply energy to a consumer says that he can do so only subject to the terms and conditions specified in his licence. The price to be charged by the licensee can, therefore, be fixed by the Government while granting a licence and in that case, the consumer could be protected from arbitrary demands by the limits set forth in the licence. The Act of 1948 itself laid down in Schedule VI, the principles according to which and the limitation subject to which a licensee may fix his rates. These provisions are, however, inapplicable to the Board, since it is not a ''licensee'' as defined by this Act [Section 2(6)].

54. The Act of 1948, in fact, leaves unfettered power to the Board in the matter of price-fixing subject only to the limitations imposed by Section 49. One of these limitations is the proviso which has already been dealt with. In my opinion, the regulations, though made by the Board itself, form another limitation. The reason is that a subordinate legislation, once made, is as much binding on the

law-making body itself as on others, so long as it remains in force and the law-making body has no dispensing power left to itself. Vide Yabbicom v. King (1899) 1 Q.B. 444, William v. flexion Rural Council (1929) 1 K.B. 450. K.N. Guruswamy Vs. The State of Mysore and Others, and State of Assam v. Kesbub (1953) S.C.R. 805.

55. It has been rightly contended by Mr. Banerjee that since the Board is a subordinate law-making body, it cannot be presumed As the Legislature left it to the Board to widen its powers in the matter of price-fixing, by its own default, that is, by not exercising its power to make regulations at all. That the principles, once incorporated in regulations made u/s 79(j), shall operate as a limitation on the power to impose any terms on the consumer is obvious. The importance of laying down such principles will also be evident from English precedents.

56. Section 37(2) of the English Electricity Act of 1947 expressly requires that the tariff which is fixed by the Central authority shall itself disclose the principles:

The tariffs fixed...shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged and shall be published....

Sub-section (3) reproduces the same requirement as regards the tariffs fixed by the Area Boards. Then comes Sub-section (8) of the section which is

An Area Board, in fixing tariffs and making agreements, shall not show under preference to any person or class of persons....

57. It is obvious that the draftsmen of our 1948 Act had the foregoing legislative precedent before them and the substance was accepted by them subject, of course, in drafting changes, since the form and technique of drafting change with draftsmen. So far as the limitation in Sub-section (8) of Section 37 of the English Act is concerned, it is reflected in the proviso to Section 49 of our Act. As regards the principles, the position under our Act seems to be better, for, if the principles are stated, not in the tariff itself, but in statutory regulations, as under our Act, the consumer would get an additional ground for impugning the tariff or the agreement, namely, that it has violated the principles laid down in the statutory regulations and is, accordingly, ultra vires. The common object of stating the principles under both the English and Indian Statutes is that it enables the consumer to challenge the validity of the tariff or the agreement on the ground that it shows an undue preference within the meaning of Section 37(8) or the proviso to Section 49 (as the case may be), in the application of the principles so stated. If the Board be at liberty to enter into an ad hoc arrangement, with each consumer, unguided by any principles, the provision Section 49 which prohibits ''undue preference'' would be rendered meaningless and nugatory.

58. If it be urged that the Indian Act does not contain a specific provision corresponding to Section 37(2) or (3), the answer is offered by the observation in A.G. v. Wimbledon Supra (p. 80), Which explains why general principle and

standards must be laid down before making tariffs and imposing terms in agreements and why such principles must be definite and precise.

A method of charging which is not based on any precise and ascertainable formula, but proceeds from vagueness of ''type'' and ''nature of electrical demand'' to the final and unchallengeable decision of an official of the local authority is open to grave abuse.

59. It is in order to prevent such abuse of unfettered discretionary power that the principles are required to be stated before exercising the discretionary power u/s 49. Hence, even though there is no provision corresponding to Sub-sections (2) and (3) of Section 37 of the English Statute in our Act, on principle, the result cannot be otherwise, for, it cannot be presumed that by leaving it to the option of the Board to make or not to make regulations u/s 79(j) the Legislature had left it to the Board to enable itself to make arbitrary tariffs or ad hoc agreements with particular individuals, unguided by any disclosed principles, while the proviso to Section 49 prohibits different treatment.

60. Again if the principles are stated, the consumer would be entitled to show, not merely that undue preference has been shown to his detriment in the charge actually demanded from him, but also that the principles themselves, as formulated, lead to a preference, even though the complainant has not actually been subjected to a higher charge. This has been laid down by the House of Lords in the case of South of Scotland Electricity Board v. British Oxygen Co. Supra (pp. 230-31). The majority, in this decision, rejected the contention that a consumer could not come to Court unless he could show that some one was being charged less than him, it was open to him to show that the principles themselves were discriminatory or were likely to lead to an undue preference. An instance to the point is offered by the Court of Appeal decision in A.G. v. Long Eaton U.D.C. (Supra) In that case, the circular which revised the principles as held to be violative of Sections 19 and 20 of the English Act of 1882. The contention that no charge had actually been made against the Appellant in pursuance of the circular was repelled by the Master of the Rolls in these words:

It is as old as the hills that if a man threatens that he intends to do something which is unlawful and asserts a right to do it, the Court will grant an injunction to restrain him. It is wholly irrelevant to say where he has done it or has not.

61. The omission to lay down the principles by making regulations u/s 79(j) of our Act, thus deprives the consumers of an additional statutory right, namely, to challenge the regulations, as soon as they are made, as violative of the proviso to Section 49.

62. It is clear that the power conferred by Section 79(j) read with Section 49 also creates a valuable right in the consumer and non-exercise of the power would lead to an injury to his right to property in being subjected to an arbitrary tariff or agreement. A default in making the regulations also deprive the consumer of an effective opportunity of pursuing his statutory right under the

proviso to Section 49. In this background, it is not illegitimate to hold that, whatever be the position as regards the regulations to be framed under the other clauses of Section 79, with which we are not concerned in the instant case, the foregoing reasons sufficiently demonstrate that the exercise of the power u/s 79(j) is a condition precedent to the fixation of the terms and of imposing them upon the consumer u/s 49. In this connection we cannot overlook the fact that Schedule VI of the Act itself lays down certain limits subject to which only a licensee would fix his rates to be charged from the consumers. In the case of the Board, this provision is not applicable. Instead, Section 49, read with Section 79(j), lays down that in the case of the Board, the matter should be governed by the general principles formulated by the Board itself before taking up the matter. To hold that the Board could, without formulating the principles at all, go on fixing such rates as it liked, would be to infer that the Legislature intended that the Board a subordinate body could act as an arbitrary authority, an intention which should not be imputed to the Legislature if avoidable.

63. There is an additional ground why we must insist on this safeguard, in the facts of the instant case. Though the Board, under the Act of 1948, is authorised to supply electricity to anybody within the State and on such terms as may be agreed upon, there is an element of initial consensus on the part of the consumers which is a precondition of the Board''s undertaking to supply energy to a particular consumer. Section 18(c) and 19(1) say that it is the duty of the Board to supply energy to a consumer who ''requires'' it from the Board ''requiring'' recalls the expression ''desirous of obtaining a supply from any undertaker'' which was used in Section 6(1) of the English Electric Lighting Act of 1909. In the instant case, the Petitioners were being supplied by the Corporation they did not require the Board to replace the Corporation and to make the supply. On the other hand, the Corporation has been obliged to stop their supply because of the withdrawal of the sanction by the Government and the Petitioners have been obliged to have it from the Board because the only other alternative left to them would be to go without electricity. It can hardly be contented that there is no imposition by the Board of the terms in question because the Petitioners are free to enter into the agreement or not. In these circumstances, it is the duty of the Court to see that all the statutory safeguards are complied with by the Board, which is a subordinate statutory authority, before it can impose its terms upon the Petitioners who have been compelled by circumstances beyond their control to have the supply from the Board.

64. The decision of the Special Bench of this Court in Surajmull Nagarmull and Others Vs. The Commissioner of Income Tax, , however, has been relied on, on behalf of the Board, to support the contention that the power to make regulations u/s 79(j) should not be construed as a duty or as a condition precedent to the exercise of the power u/s 49. The statutory provisions in question in that case was Section 37(2) of the income tax Act, 1922.

...subject to any rules made in this behalf, any income tax officer specially authorised by the Commissioner in this behalf, may (i) enter and search any building or place....

65. Section 59(1) of the Act conferred the Rule making power on the Central Board of Revenue in these words:

The Central Board of Revenue may subject to the control of the Central Government make rules for carrying out the purposes of this Act....

66. It was contended on behalf of the Petitioners that the power to seize and search did not arise until Rules under the Act had been framed u/s 59, relating to the matter and that no Rules having been framed at the time of making the impugned search, it was illegal. This contention was rejected by the learned Judges for the following reason:

(a) The expression used in the relevant provision was not ''subject to rules made'', but ''subject to any rules made'' and that showed that the search would be subject to the Rules if and when rush Rules were framed.

(b) It was possible to give effect to the provisions in Section 37(2) without any Rules, it might have been otherwise if it was impossible to do so without any Rules.

(c) The contrary view taken by the Supreme Court in Narendra Kumar and Others Vs. The Union of India (UOI) and Others, , which was relied upon on behalf of the Petitioners was distinguished on the ground that there the relevant statutory expression was ''except'' and in accordance with Rules.

67. I would humbly submit that the reason why permissive words are construed as obligatory in particular cases is not the form of the words, for, in that case, ''may'' could never be construed as implying ''must'' because ''may'' can only mean ''may''. The reason is deeper, namely, the object of the relevant statute, which must always be-the guiding star in any statutory interpretation. A reference to the statutory provision in question in Narendra Kumar and Others Vs. The Union of India (UOI) and Others, will also show that the relevant words were not ''except in accordance with'', but ''in accordance with such principles as the Central Government may from time to time specify''. Clause 4 of the Non-Ferrous Metal Control Order, 1958, framed under the Essential Commodities Act, 1955, laid down that the acquisition of non-ferrous metal could be lawful only if made in accordance with a permit.

No person shall acquire...non-ferrous metal except in accordance with a permit issued in this behalf by the Controller in accordance with such principles as the Central Government may from time to time specify.

68. The unanimous Court, speaking through Das Gupta, J., held that Clause 4 of the Order could not be enforced so long as the principles, referred to in the latter portion of the clause, were not framed and issued an order in the nature of mandamus, in the following terms:

We direct that an order be issued restraining the Respondents from enforcing Clause (4) of the Non-Ferrous Metal Control Order, so long as principles in accordance with law are not published....

69. It is obvious that the relevant words which were construed as obligatory by the Supreme Court were not ''except and in accordance'' which relate to the permit, but the words ''in accordance with such principles as the Central Government may from time to time specify''. If words were the sole guide, the Supreme Court might have held that it was entirely in the discretion of the Central Government to lay down such principles at any time it liked and that it is only when such principles were in fact laid down by the Central Government that the permit was to conform to such principles. The Court, however, held that the laying down of principles relating that the acquisition of non-ferrous metal could be made only under a permit. The reasons given by the Supreme Court were twofold:

(i) Without the formulation of any principles, the issue of permits would be left to the unfettered and unguided discretion of the Controller.

It is not possible to build on the use of the words ''may specify'' in Clause (4) an argument that so long as no principles are specified the Controller would have authority to issue such permits by exercise of his own judgment and discretion.

(ii) A permissive construction would render Clause (4) unconstitutional as an unreasonable restriction imposed upon the fundamental right of property and business guaranteed to the dealers in non-ferrous metal by Article 19(5) and (6) of the Constitution.

Enforcement of the provision that no person shall acquire...except under a permit...so long as the principles are not specified...would mean a total stoppage of the copper trade.... On the face of it this could not be a reasonable restriction in the interests of the general public.

70. I do not see any reason why the construction adopted by the Supreme Court in Narendra''s case (Supra) should not be followed in the case before me. In the absence of regulations made u/s 79(j) not only will the consumers be left to the unguided discretion of the Board in the matter of price-fixing and in imposing other terms, but it would be impossible for the consumers to exercise effectively their statutory and justiciable right created by the proviso to Section 49 itself, as has been explained by me earlier. Since the fixing of charges far the supply of electricity affects the property rights of the consumers, it may well be said that the construction that it was Hot obligatory to make the regulations before imposing terms by the Board upon the consumer would constitute Section 49 an unreasonable restriction upon the fundamental right of the consumer under Article 19(1)(f), by leaving the property right to be affected by exercise of an unguided discretion by a subordinate authority.

71. The existence of the proviso to Section 49, in my opinion, also distinguishes

the instant case from the case before the Special Bench in Surajmull v. I.T. Commr. (Supra). The fact that the power to make regulations is vested in the same body, namely, the Board which is to impose the tariff and other conditions upon the consumer, further distinguishes the case before me from the case before the Special Bench, where the rule making power was vested in an authority other than the income tax Officer who was authorised to make the search, namely, the Board of Revenue. If the making of regulations be construed as discretionary or optional with the Board, the result will be that it will be left to this subordinate authority to enlarge its own powers and to ignore the limit on its power which has been provided in the Act in the public interest. No such intention can be imputed to the Legislature.

72. Having considered all aspects, I think the Petitioners have established their case for an order in the nature of mandamus restraining the Board (Respondent No. 2) from enforcing the impugned notification against the Petitioners so long as regulations u/s 79(j) are not made by the Board and the notification is reissued in conformity with the principles laid down therein.

73. There is another argument advanced on behalf of the Petitioners which should be adverted to before parting with this case.

74. The red pamphlet which contains the impugned charges has the following title.

West Bengal State Electricity Board; Standard Rates and Charges; Howrah-Amta Grid and Singoor.

75. It is contended on behalf of the Petitioners that this being a ''Grid Tariff within the meaning of Section 46, could not be applied to consumers for the purposes of Section 49. If it is ''Grid Tariff'', this contention has to be upheld inasmuch as Sub-section (2) of Section 46 lays down specifically that the Grid Tariff is meant for licensees alone. In this connection, we may also refer to Clauses (h) and (j) of Section 79 which show that the principles governing the fixation of a Grid Tariff and the principles governing the fixation of terms for the supply to non-licensee consumers are necessarily different. It follows that the Grid Tariff cannot, in the nature of things, be passed on to the consumers. The averments in paras. 4, 6 and 7 of the supplementary counter-affidavit of June 12, 1964, with which a copy of the red pamphlet was presented, are somewhat confusing. It is stated that the rates contained in the red pamphlet have not been framed in exercise of the powers conferred by Section 46, but that they have been framed for consumers only. But then, there should have been some explanation how the word ''Grid'' came to be used in the red pamphlet. The expression is heightened by the Board''s letter in annex. E. of October 6, 1961 which says that ''the Howrah-Amta Grid rate'' will be applicable to all consumers. Anyhow, since I rest my judgment on my conclusions regarding the duty to make regulations u/s 79(j) before making any tariff u/s 49, it is not necessary to rest on any separate finding on this point.

76. The last point taken on behalf of the Petitioners is that the impugned notice in annex. D has been signed by the Chief Engineer of the Board and is thus not in conformity with Section 13 of the Act of 1948 and not, accordingly, enforceable. There is no doubt that it is a decision of the Board to enforce the charges in the red pamphlet against the Petitioners and it is also an order calling upon the Petitioners to execute an agreement, accepting these terms. Section 13 would thus, prima facie, be attracted.

All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf and all other instruments issued by the Board shall be authenticated by the signature of such members or officer of the Board as may in like manner be authorised in this behalf.

77. Being a statutory body corporate (vide Section 12), the Board can act only in the manner laid down in Section 13. The non-compliance with Section 13 of the Act was urged as a ground in para. 9 of the supplementary affidavit of the Petitioners of August 21, 1964. The answer to this ground is to be found in para. 5(b) of the supplementary counter-affidavit of the Board, dated September 4, 1964. In my opinion, it is confusing and furnishes no answer to the ground in question taken by the Petitioners. The counter-affidavit says:

With further reference to para. 9 in particular I deny the allegation that the standard rates charged for the consumers were hot decisions of the Board and that such decisions were not duly

authenticated as alleged. It is the Board which has framed standard rates and charges.

78. The substance of this answer, at its best, is that the red pamphlet has been issued after it has been duly authenticated u/s 13. But nothing is stated in the supplementary counter-affidavit as to why the impugned notice in annex. D should not be similarly authenticated u/s 13. It purports to have been issued by the Board and there is no doubt that it is an ''instrument'' which is a word of wide significance. Hence, even if the notice demanding the rates included in the red pamphlet be regarded not as a ''decision'' of the Board, there is no doubt that it is an instrument issued in exercise of statutory powers, which is likely to be legally enforced by the Board in case of the failure of the Petitioner to comply with it Hence, there is no doubt that it should have been authenticated by a member or officer of the Board authorised in this behalf according to the latter part of Section 13. It has not, however, been urged in the counter-affidavit nor shown at the hearing that the Chief Engineer was an officer empowered by the Board in this behalf.

79. In the result, the impugned notice must be held to be ultra vires and invalid on the present ground as well.

80. In the result, this Rule is made absolute against Respondent No. 2, the State

Electricity Board and discharged against the rest. Petitioners shall get their costs against Respondent No. 2, hearing fee being assessed at ten gold mohurs, while Respondent No. 4, the Corporation, shall get their costs from the Petitioners, hearing fee being assessed at three gold mohurs.

81. Let an order in the nature of mandamus do issue restraining Respondent No. 2 from enforcing the impugned notice in annex. D against the Petitioners so long as regulations u/s 79(j) of the Electricity (Supply) Act of 1948 are not made by the Board and the notice is re-issued in conformity with the principles laid down in such regulations and in accordance with law.

