(1998) 02 OHC CK 0019

In the Orissa High Court

Case No : Misc. Appeal No''s. 599 and 600 of 1997 and M.J.C. No. 229 of 1997

Grid Corporation of Orissa Ltd. APPELLANT

Vs

Indian Charge Chrome Ltd. RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 40(1), 41, 43, 7
Constitution of India, 1950 — Article 14
Electricity Act, 1910 — Section 2
Orissa Electricity Reforms Act, 1995 — Section 2, 37

Citation : AIR 1998 Ori 101

Hon'ble Judges : S.N. Phukan, C.J

Bench : Single Bench

Advocate : N.C. Panigrahi, S.C. Dash, Bikash Mohanty and Anuradha Dutt, for the Appellant; Indira Jaisingh S.S. Das, S.P. Misra, S.R. Das, R.R. Mohanty, M. Karunga, Amicus Curiae, N.C. Panigrahi, S.C. Dash and Samareswar Mohanty, for the Respondent

Judgement

S.N. Phukan, C.J.—By this common judgment and order, two appeals, registered as Misc. Appeal Nos. 599/97 and 600/97 and M.J.C. No. 229/97 are being disposed of.

2. The two appeals have been filed by the Grid Corporation of Orissa Ltd. (for short ''GRIDCO'') against the judgment and order of the Second Additional District Judge, Bhubaneswar, dated 25-7-1997, passed in Misc.Case No. 219of 1997 and Misc. Case No. G/195 of 1997. M.J.C. No. 229 of 1997 has been registered on an application filed u/s 11 of the Arbitration and Conciliation Act, 1996 (for short, ''The Arbitration Act, 1996'') by the Indian Charge Chroms Ltd. (lor shon, ''ICCL'') against the GRIDCO and the Orissa State Electricity Regulatory Commission (for short, ''Regulatory Commission'').

3. A notice dated 20-6-97 for disconnection of power was issued by the GRIDCO against the ICCL. Against the said notice, two applications were filed u/s 9 of the Arbitration Act, 1996 before the Second Additional District Judge, Bhubaneswar.

''Both the applications were allowed restraining disconnection of power supply till the disposal of case No. 15 of 1997, which was pending before the Regulatory Commission. It may be stated that the court below passed ex parte ad interim injunction restraining the GRIDCO from disconnecting the power supply. Against the said order, this Court was approached in Misc. Appeal No. 297/97 and this Court directed that on depositing Rs. 5 crores with the GRIDCO power supply shall be restored. Against that order, a SLP was filed, which was registered as SLP No. 10969/97 and 11055/ 97 before the apex Court. The apex Court modified the order of this Court to the extent that instead of depositing Rs. 5 crores on depositing Rs. 2.5 crores, the electricity supply should be reconnected immediately and that the rest Rs. 2.5 crores would be deposited subsequently.

4. It is necessary to state the facts in dispute beween the parties.

The Indian Metais and Ferro Alloys Company (for short ''IMFA'') a company of ICCL and GRIDCO, a company registered under the Companies Act, 1956 and under the provisions of the Indian Electricity Acl, 1910 (for short, ''Act of 1910'') and Electricity (Supply) Act, 1948 (for short, ''Act of 1948'') is generating power. Supply and transmission of electricity was earlier done by the Orissa State Electricity Board, within the State of Orissa. But, by the Orissa Electricity Reforms Act, 1995 (for short, ''OER Act, 1995''), the Board was dissolved and the function of transmission of electricity has been vested with GRIDCO, the successor-in-interest of the State Electricity Board. The Regulatory Commission is a statutory Commission set up under the above OER Act. IMFA set up a large Ferro Alloys Complex at Therubali, Rayagada district, Orissa and due to irregular supply of power, which prejudicially affected the functioning of the company, IMFA decided to set up a Captive Power Plant in Orissa in 1982 and it also obtained a licence for charge-chrome manufacturing plant. The ICCL decided to have another manufacturing unit at Choudwar due to proximity of coal and other raw materials. The power plant was set up to provide power to the Charge Chrome Plant of the IMFA and also for the sale of surplus power to Orissa State Electricity Board and for administration convenience ICCL was incorporated. IMFA asked the Government of Orissa and Orissa State Electricity Board to give permission for the project and for transmission of surplus electricity to the IMFA which is at a distance of 350 K.Ms, from Choudwar. As transmission through grid was ID be done by the Orissa State Electricity Board, permission was given in writing by the State Government and the Orissa State Electricity Board (for short, ''OSES''). The Orissa Slate Electricity Board by letter dt. 10-1-86 specifically represented that the system voltage and frequency variation would be as per Rules 54 and 55 respectively of Indian Electricity Rules, 1956. Accordingly, equipments were designed for a system voltage of 132 KV = 12.5% and for frequency of 50 NU 3% at the Choudwar captive power plant. Thereafter, an agreement was executed between the iCCL and OSEB along with IMFA on 14-2-1989 for wheeling arrangement of power to IMFA by the ICCL through the grid of the OSEB. The ICCL also entered into an agreement with Paradeep Phosphates Ltd. (for short ''PPL'') to supply electricity and to meet their needs for manufacturing industries. The agreement dated 14-2-1989 was modified on 15-11-94 on which date the ICCL and the OSEB entered into an agreement for transmission of electricity generated by the ICCL to meet the requirements of the IMFA and PPL. The ICCL would feed 10 MW power to the grid at Choudwar, which is a load despatch centre. OSEB wanted to avoid transmission loss of carrying the same to the IMFA and, therefore, it agreed to feed IMFA al Therubali from the Therubali grid sub-station. The terms of the said agreement dated 15-11-1994 are quoted below :--

(a) IMFA and PPL would be sole consumers of electricity generated by ICCL.

(b) Electricity generated by ICCL would be fed into the grid at Choudwar and PPL and IMFA would draw their requirements from the grid of OSEB at their respective places.

Under the agreement, ICCL agreed to pay OSEB for any. over drawal from the grid than the supply by it at the rate of Rs. 2.31 per unit of power drown by IMFA and PPL, and, in case of power drown by OSEB from ICCL, OSEB would pay ICCL at 77 paise per unit. Billing would be done on a monthly basis.

The memorandum of understanding is available at Anncxure 1 of M.J.C. No. 229 of 1997 and it was implemented by the parties. Being the successor of OSEB, GRIDCO is bound by the agreement.

According Lo ICCL, GRIDCO, contrary to all known practices of billing and contrary to the agreement between the parties, began to make half-an-hour adjustments and bills began to be raised of half-an-hour settlement basis. It is pleaded by the ICCL that GRIDCO is duty bound under the Act of 1910 and the Act of 1948 to maintain grid discipline at the statutory limitations, but it started defaulting, and since July, 1996, the frequency of the grid has been fluctuating beyond the upper limits of the statutory level obstructing the stable power generation besides causing severe damage to the power plant of ICCL at Choudwar. According to the ICCL, problems of irregularity in the grid have been discussed with the Eastern Regional Electricity Board, of which GRIDCO is a member, and all the members have been asked to chalk but concrete steps in order to maintain normalcy in the grid. Ministry of Energy, Government of India, have taken note of such grid indiscipline and have warned against running a power plant during high grid frequency. In view of the above grid indiscipline by the GRIDCO, ICCL not being able to feed the electricity generated was forced to isolate its unit from the grid of GRIDCO and damage has been caused due to the high frequency to the power plant of ICCL. The ICCL is capable of generating an average of 90-95 M W of power, but due to high frequency, the grid of the GRIDCO is not available to ICCL for feeding the power. It is now urged that GRIDCO is duty bound to maintain the grid discipline to enable the ICCL to feed the power of the grid to be drawn by IMFA and PPL. It has been stated that GRIDCO forced the ICCL to isolate the power plant/grid on several occasions and has soughi electricity charges from ICCL for electricity drawn by IMFA and PPL alleging that the same is in excess of power fed into the grid by the ICCL on half-an-hour settlement basis in total breach of agreement and under the prevalent law. The ICCL informed from August, 1996 to February, 1997 verbally and also in writing about the high frequency of ihe grid but no action was taken. Therefore, ICCL is in huge loss. According to ICCL, the dispute arose between it and the GRIDCO, which failed to maintain the grid frequency and raised illegal bills, as a result of which the ICCL suffered huge loss. Therefore, the dispute was referred to arbitration u/s 37 of the OER Act, 1995 on 25-2-1997 vide Annexure-2. On 17-3-1997, Regulatory Commission scni a letter to the GRIDCO stating that the claim of the ICCL was being treated as reference u/s 37(1) and/or Section 33 of the OER Act, 1995 and directed the GRIDCO to send its reply. It has been pleaded that the GRIDCO wrongfully and illegally, as a counter to the arbitration proceedings, initiated coercive action and sent a leller on 9-4-1997 asking [he ICCL to pay a sum of Rs. 24.828 crores by 22-4-1997 with the threat of disconnection of back-up power to the IMFA and PPL. Reply was sent by the ICCL to GRIDCO to await the decision of the arbitrator before taking any coercive steps. But GRIDCO sent a disconnection notice on 24-4-1997. vide Annexure-3.

5. GRIDCO also filed reply before the Regulatory Commission on 15 4-1997 without raising any objection as to arbitration reference vide Annexure-4. It has been pleaded that in the event power supply is disconnected, manufacturing activities of IMFA and PPL would come to a'' grinding halt and more than 2000 workers employed directly or indirectly along with their families would be affected by the closure of the industries. IMFA is also a foreign exchange earner of our country. Therefore, ICCL filed a petition u/s 9 of the Arbitration Act, 1996 before the District Judge, Puri and obtained an ex parte ad interim injunction against GRIDCO restraining it from disconnecting backup power supply to ICCL, IMFA and PPL and GRIDCO ws accordingly formed on 30-4-1997. It has been alleged that even after receipt of the order, power supply to PPL was disconnected on 1-5-1997. There were further proceedings before thsi Court as well as the apex Court, and on payment of Rs. 5 crores, as ordered by the apex Court, electricity was reconnected. It is not necessary to refer to all these litigations and explanations given in the counter regarding disconnection. As stated above, in the proceedings before the District Judge, an order has been passed restraining the GRIDCO from disconnecting power till disposal of the proceeding pending before the Regulatory Commission. Even during the pendency of the proceeding, PPL obtained direct electricity connection from the GRIDCO. Allegation of arm-twist of the ICCL by GRIDCO has been made, which has been denied in the counter.

6. On 21-5-1997, Regulatory Commission wrote a letter pointing out some irregularities in the petition filed by the ICCL on the question of maintainability. GRIDCO also filed an additional affidavit before the Regulatory Commission raising the issue of maintainability. It has been pleaded that the Regulatory Commission is wrongfully delaying the matter which is tantamount to refusal to appoint an arbitrator u/s 37(1) read with Section 33 of the Orissa Electricity

Reforms Act, 1995, which amounted to failure on the part of the Regulatory Commission to appoint an arbitrator. Therefore, this Court has been approached under the provisions of the Arbitration Act, 1996.

7. In the counter filed in M.J.C. No. 229 of 1997, the main contention is that the present application filed u/s 11 of the Arbitration Act. 1996isnot maintainable as there is no written arbitration clause. It has also been urged that the Regulatory Commission has no jurisdiction to arbitrate the matter in the absence of any arbitration clause in the agreement entered into between the parties, and in view of the provisions of Section 11(2) and Section 37(1) of Ihe OER Act, 1995, the Regulatory Commission has to arbitrate the dispute between the licensees. According to the GRIDCO, ICCL is not a licensee under the Aet of 1910 and/or the Act of 1948 and, therefore, the Regulatory Commission has no jurisdiction.

8. It is not disputed that the GRIDCO is the successor of the OSEB. According to the GRIDCO, Annexure-1 is only a memo of understanding and not an agreement. In the counter, it has been stated that the procedure for power transaction between the ICCL and OSEB as per the Anncxure-1 was operated through an agreement executed between the parties on 4-3-1995. Reference has been made to the various clauses of the agreement and it has been specifically pleaded that the GRIDCO is acting strictly in accordance with the agreement and there has been no violation. Regarding grid indiscipline, it has been urged that the GRIDCO is running in parallel to the Eastern Regional Electricity Board (shortly stated, ''EREB'') and the different constituents of EREB like West Bengal, Bihar, Sikkim, Orissa are operating under one frequency under the direction of Eastern Regional Load Despatch Centre (ERLDC) situated at Calcutta. GRIDCO attended various meetings of operation/co-ordination committee of EREB and is aware of various attempts/ ''measures undertaken by EREB to limit the frequency excursion within the statutory limits. The said authority has also constituted a committee to analyse the case of high frequency operation and to suggest remedial measures, vide Annexure-F/1. In view of the above, it has been pleaded that frequency variation is a regional phenomenon and beyond the control of GRIDCO. The ICCL was duly informed and given option to remain in synchronism with GRIDCO, which is facing high frequency problem. Reference has been made to the memo of understanding between the GRIDCO and ICCL executed on 10-12-1996, vide Annexure-G/L. Chart showing frequency details in the Eastern Region for the year 1992-93 has been annexed as Annexure-N/1. Frequency details reflected in the annual report of EREB for the years 1993-94 and 1994-95 have been annexed as Annexure-I/1.

9. It is not necessary to refer to other facts mentioned in the counter/objection as this Court is only to decide the following points :--

(i) Whether the dispute between the parties is arbitrable? ;

(ii) If arbitrable, whether it is within the jurisdiction of the Regulatory Commission?

(iii) Whether the Regulatory Commission has neglected to arbitrate into the matter/to appoint an arbitrator?

10. To appreciate the contentions raised by the parties, reference may be made to various sections of different Acts, Rules, etc.. which we quote beiow :--

Indian Electricity-Act, 1910, Sections 2(h), 19, 22, 33 and 37(1)

"2. Definitions.-

In this Act, expressions defined in the Indian Telegraph Act, 1885 (13 of 1885), or in the Electricity (Supply) Act, 1948 (84 of 1948), have the meanings assigned to them in either of those Acts, and unless there is anything repugnant in the subject or context-

(h) ''licensee'' means any person licensed under Pt. II to supply energy;

19. Compensation for damage-

(1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or any one employed by him.

(2) Save in the case provided for in Section 12, Subsection (3), where any difference or dispute arises as to the amount or the application of such compensation the matter shall be determined by arbitration.

24. Discontinuance of supply of consumer neglecting to pay charge-

(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days'' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line of other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

Provided that the prohibition contained in this sub-section not apply in any case which the licencee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee''s charges or other sums in dispute or for the deposit of the licensee''s further charges for energy as they accrue, and the consumer has failed to comply with such request.

33. Notice of accidents and inquiries-

(1) If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply-lines or other works of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector and to such other authorities as the appropriate Government may by general or special order, direct.

(2) The appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other competent person appointed by it in this behalf, to inquire and report-

(a) as to the cause of any accident effecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, supply or use of energy; or

(b) as to the manner in, and extent to, which the provisions of this Act or of any licence or rules thereunder, so far as those provisions effect the safety of any person, have been complied with.

(3) Every Electrical Inspector or other person holding an inquiry under sub-section (2) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) for the purpose of enforcing the attendance of witnesses and compelling the production of document and material objects, and every person required by an Electrical Inspector or such other person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of Section 176 of the Indian Penal Code (45 of 1860).

37. Power for Board to make rules--(1) The Central Electricity Board may make rules, for the whole or any part of Ihe territories to which this Act extends, to regulate the generation, transmission, supply and use of energy, and generally, to carry out the purposes and objects of this Act."

Reference may also be made to the whole of Part II of the Act. In this connection, it may be stated that as various similar petitions were filed.

we req''uested Mr. M. Kanungo to assist the Court, arid he has filed a written note. He has drawn our attention to various decisions of this Court, which we shall deal later.

Indian Electricity Rules, 1956, Rule 55.

"55. Declared frequency of supply to consumer-

Except with the written consent of the consumer or with the previous sanction of the State Government a supplier shall not permit the frequency of an alternating current supply to vary from the declared frequency by more than 3 per cent?.

II. Electricity (Supply) Act, 1948 Sections 2(6), 26, 26A 28 and 44

"2. Interpretation-

In this Act unless there is anything repugnant in the subjects or context-- ''

(6) ''licencee'' 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 Sections 26 or 26A of this Act notwithstanding does not include the Board or a Generating Company)

26. Board to have powers and obligations of licensee under Act 9 to 1910-

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 Electriciiy Act, 1910 and this Act shall be deemed to be the licence of the Board for the purposes of that Act, provided that nothing in Sections 3 to 11, Sub-sections (2) and (3) of Section 21 and Section 22, sub-section (2) of Section 22A and Sections 23 and 27 of that Act or in clause 1 to V, clause VII and Clauses IX to XII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board :

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area where distribution mains have been laid by the Board and the supply by energy through any of them has commenced.

26A. Applicability of the provisions of Act 9 of 1910 to Generating Company-

(1) Notwithstanding anything contained in sub-section (2), nolhing in the Indian Electricity Act, 1910, shall be deemed to require a Generating Company to take out a licence under that Act, or to obtain sanction of the State Government for the purpose of carrying on any of the activities. (2) Subject to the provisions of this Act, Sections 12 to 19 (both inclusive) of the Indian Electricity Act, 1910 and clauses XIV to XVII (both inclusive of the Schedule thereto, shall, as far as may be, apply in relation to a Generating Company as they apply in relation to a licensees under that Act (hereinafter in this section referred to as the licensee) and in particular a Generating Company may, in connection with the performance of its dutes, exercise-

(a) all or any of the powers conferred on a licensee by Sub-section (1) of Section 12 of the Indian Electricity Act, 1910, as if-

(i) the reference therein to licensee were a reference to the Generating Company;

(ii) the reference to the terms and conditions of licence were a reference to the provisions of this Act and to the articles of association of the Generating Company; and

(iii) the reference to the area of supply were a reference to the area specified under Sub-section (3) of Section 15A in relation to the Generating Company;

(b) all or any of the powers conferred on a licensee by Sub-section (1) of Section 14 of the Indian Electricity Act, 1910, as if-

(i) the reference therein to licensee were references to the Generating Company; and

(ii) the Generating Company had the powers of a licensee under the said Acl.

(3) The provisions of Section 30 of the Indian Electricity Act, 1910, shall not apply to the transmission or use of energy by a Generating Company.

(4) For the removal of doubts, it is hereby'' declared that Sections 31 to 34 (both inclusive) of the Indian Electricity Act, 1910, shall apply to a Generating Company.

28. Preparation and sanctioning of scheme-

(1) For the efficient performance of its duties under this Act, the Board or a Generating Company, as the case may be, may prepare one or more schemes, relating to the establishment or acquisition of generating stations, tie-lines, sub-stations or transmission lines as are referred to in Clause (a) of Section 18 or Clause (c) of Sub-section (1) of S. 18A as the case may be.

(2) The Board or, as the case may be, the Generating Company which has prepared a scheme may, sanction such scheme either generally or in respect of any part of the area specified in the scheme and where a scheme has been sanctioned in respect of any part of the area such scheme may subsequently be sanctioned in respect of any other part of that area ;

Provided that where the scheme is of the nature referred to in Sub-section (1) of Section 29, the scheme shall not be sanctioned (generally or for part of an area) by the Board or the Generating Company except with the previous concurrence of the Authority.

(2A) The Board or, as the case may be, the Generating Company shall, as soon as may be after it has sanctioned any scheme which is not of the nature referred to in Section 29 forward the scheme to the Authority and, if required by Authority so to do, supply to the Authority any information incidental or supplementary to the scheme within such period as may be specified by the Authority.

(3) Every scheme sanctioned under thissection shall be published in the official Gazette and in such local newspapers as the Board or, as the case may be, the Generating Company may consider necessary.

44. Restriction on establishment of new generating stations or major additions or replacement of plant in generating stations-

(I) Notwithstanding anything contained in any other law for the time being in force or in any licence, but subject to the provisions of this Act, it shall not be lawful for a licensee, or any other person, not being the Central Government or any Corporation created by a Central Act or any Generating Company, except with the previous consent in writing of the Board, to establish or acquire a new generating station or to extend or replace any major unit of plant or works pertaining to the generation of electricity in a generating station.

Provided that such consent shall not, except in relation to acontrolled station, be withheld unless within three months from the date or receipt of an application.

(a) for consent to the establishment or acquisition of a new generating station, the Board-

(i) gives to the applicant being a licensee an undertaking that it is competent to, and well, within twenty-four months from the said date, afford to him a supply of electricity sufficient for his requirements pursuant to his application; or

(ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source;

(b) for consent to the extension of any major unit of plant or works as aforesaid, the Board-

(i) gives to the applicant being licensee an undertaking that within twenty-four months from the said date either the station to which the application pertains will become a controlled station in terms of S. 34, or the Board will make a declaration to the applicant in terms of S. 35 offering him a supply of electricity sufficient for his requirements pursuant to his application, or the Board will make a declaration to him in terms of S. 36; or

(ii) shows to the applicant that electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another approprite source or by other appropriate means;

(c) for consent to the replacement of major unit of plant or works, the Board-

(i) gives to the applicant being a licensee an undertaking that within eighteen months from the said date either the station to which the application pertains will become a controlled station in terms of S. 34 or the Board will make a declaration to him in terms of S. 36; or

(ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source or by other appropriate means.

(2) There shall be stated in every application under this section such particulars as the Board may reasonably require of the station plant or works, as the case may be, in respect of which it is made, and where consent is given thereto, in acting in pursuance of such consent, the applicant shall act, without the further consent of the Board, make any material variation in the particulars so stated.

(2-A) The Board shall, before giving consent under Sub-section (1), to the establishment or acquisition of a new generating station or to the extension or replacement of any major unit of plant or works, consult the authority in cases where the capacity of the new generating station or, as the case may be, the additional capacity proposed to be created by the extension or replacement exceeds twenty-five thousand kilowatts.

(3) Any difference or dispute arising out of the provisions of this section shall be referred to the arbitration of the Authority.

III. Orissa Electricity Reforms Act, 1995 Sections 11 (2), Hand 37(1) .

"11. Functions of the Commission :

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(2) Notwithstanding the provisions of Section 52 of the Indian Electricity Act, 1910 or the provisions of Clause (ii) of Sub-section (1) of Section 3 and Section 76 of the Electricity (Supply) Act, 1948, the Commission shall have the power to act as arbitrator or to nominate arbitrator or arbitrators to adjudcate and settle the disputes arising between the licensees in accordance with the provisions of the Act and the regulations to be prescribed and this shall be a condition of the grant of licences.

14. Licensing.

(1) No person, other than those authorised to do so by licence or by virtue of exemption under this Act or authorised or exempted by any other authority under the Electricity (Supply) Act, 1948, shall engage in the State in the business of

(a) transmitting; or

(b) supplying electricity.

(2) Where any difference or dispute arises as to whether any person is or is not engaged or about to engage in the business of transmitting or supplying electricity as mentioned in Sub-section (1), the matter shall be referred to the Commission for decision which shall be final.

(3) The Commission shall have the power to order any unlicensed person to cease operating and disconnect its apparatus.

(4) Notwithstanding anything contained in the other provisions of this Act, until the establishment of the Commission in terms of Section 3, the State Government shall, for a period of six months from the date this Act comes into force, have the power to grant provisional licences under this section having a duration not exceeding twelve months to any person or persons to engage in the State in the business of transmission or supply of electricity, on such terms and conditions as the State Government may determine consistent with the provisions of this Act, subject however to the following conditions, namely :--

(a) upon the establishment of the Commission, each of the provisional licencees so granted shall be placed before the Commission and shall be deemed to constitute an application for grant of a licence by the Commission under the provisions of this Act; and

(b) each provisional licence granted under this section shall cease to be valid and effective on the date on which the decision of the Commission on the application is communicated.

37. Arbitration by the Commission :

(1) Notwithstanding anything contained in the Arbitration Act, 1940 (10 of 1940) any dispute arising between licensees or in respect of matters provided u/s 33 shall be referred to the Commission. The Commission may proceed to act as arbitrator or nominate arbitrators to adjudicate and settle such dispute. The practice or procedure to be followed in connection with any such adjudication and settlement shall be such as may be prescribed by regulations."

IV. Arbitration and Conciliation Act, 1996 Sections 7, 11 and 16

"7. Arbitration agreement-

(1) In this part, ''arbitration agreement'' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contractor in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

11. Appointment of arbitrators-

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to Sub-section (6), the parties are free to agree on a procedure for

appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in subsection (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in Sub-section (3) applies and-

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in subsection (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where under an appointment procedure agreed upon by the parties-

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by subsection (4) or Sub-section (5) or Sub-section (6) to the Chief Justice or the person or institution designated by him in final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator shall have due regard to-

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution

designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by Sub-section (4) or Sub-section (5) or Sub-section (6) to him.

(11) Where more than one request has been made under Sub-section (4) or Sub-section (5) or Sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice of his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12)(a) Where the matters referred to in subsections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to ''Chief Justice'' in those sub-sections shall be construed as a reference to the ''Chief Justice of India''.

(b) Where the matters referred to in Subsections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to ''Chief Justice'' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in Clause (8) of Sub-section (1) of Section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

16. Competence of arbitral tribunal to rule on its jurisdiction-

(1) The arbitral tribunal may rule on its own jurisdiction including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jura the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of an arbitrator.

(3) A plea that the arbitral tribunal in exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbital proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in Sub-section (2) of Sub-section (3), admit a later plea if it considers the delay justified;

(5) The arbitral tribunal shall decide on a plea referred to in Sub-section (2) or Sub-section (3) and, where the arbitral tribunal takes a decision rejecting the

plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with S. 34.

Section 7 of the Arbitration and Conciliation Act, 1996 clearly indicated that "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Sub-section (2) of Section 7, inter alia, provides that arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement, Sub-section (3) provides that arbitration agreement shall be in writing. Thus, it appears that arbitration agreement between the parties will also include an agreement whether contractual or not. Though emphasis has been laid by the learned Counsel for the Grid Corporation that it has to be in writing, this Court is unable to accept the submission in view of the wide definition as stated above and for the reasons stated below.

12. According to Collins Cobuild English Language Dictionary, a written agreement, guarantee, rule law etc. is recorded or expressed in writing rather than verbal. According to Chambers Dictionary, written law means statute law as distinguished from common law. According to Black''s Law Dictionary (5th Edn.), written law means statutory law, i.e.. law deriving into force from express legislative enactment, and, written instrument means something reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract.

13. Though in Sub-section (3) of Section 7 of the Arbitration Act. 1996, it is provided that arbitration agreement shall be in writing, but this particular sub-section has to be read along with other sub-sections of section 7. From the dictionary meaning as noted above, written agreement would mean an agreement reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract. From Clause (c) of Sub-section (4) of Section 7 of the Arbitration Act, 1996. it is absolutely clear that an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

14. Sub-section (2) of Section 2 of the Arbitration Act, 1996 inter alia provides that Arbitration Act, 1996 shall apply where the place of arbiration is within India. Further, Sub-section (4) of Section 2 provides that the scope of the Act except Sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of Part I of Arbitration Act, 1996 ace inconsistent with other enactment or with any rules made thereunder. Therefore, this Court held that even though there is no

written agreement, provisions contained under different sections of Part I of the Arbitration Act, 1996 excepting Sub-sections (1) of Sections 40, 41 and 43 shall apply to every arbitration under any other enactment.

15. In this connection, reference may be made to the decision of the (sic) Court in Mysore Manufacturers and Traders (MMT) Vs. Karnataka Elect. Board (KEB), . In paragraph 12 learned single Judge was of the view that when arbitration is sought not on the basis of an arbitration agreement between the parties but on the basis of a statutory provision in another enactment, then by virtue of Section 46 of the Arbitration Act, 1940, statutory provision will have to be deemed as an arbitration agreement and in such a case, Sections 32 and 33 would get attracted. But Section 46 of that Act is not per se applicable to all statutory arbitrations if the provisions of the old Arbitration Act are inconsistent with the provisions of the enactment under which arbitration is sought. I am in respectful agreement with the above ratio.

16. This Court holds that Section 7 of the Arbitration Act, 1996 would apply to the present case in view of the fact that the scope of the Arbitration Act is very wide and it not only contains arbitration agreement in writing but also other arbitration agreements as mentioned in Sub-section (4). It is also held that if there is any arbitration agreement in any other enactment for the time being in force i.e. statutory agreement, provisions of Arbitration Act, 1996 shall apply except Sub-section (1) of Section 40 and Sections 41 land 43.

17. Sub-section (1) of Section 40 provides that an arbitration agreement shall not be discharged on the death of any party. Section 41 lays down provisions in case of insolvency, and Section 43 is regarding limitations. In the case in hand, this Court is not concerned with the above provisions of the Arbitration Act, 1996.

18. According to Mr. Panigrahi, as perSection 37 of the ERA Act, 1995. the Regulatory Commission can decide the disputes between the licensees or in respect of matters provided in Section 33 thereof. As the ICCL is not a licensee, Regulatory Commission has no jurisdiction. Learned counsel went to the extent of urging that the present dispute can only be decided by the Civil Court.

19. On the other hand, Ms Indira Jaisingh, learned Counsel for the ICCL has urged that keeping the provisions of Act of 1910 and Act of 1940 in view, the present dispute is arbitrable as ICCL is a licensee. Therefore, the questions to be decided are, whether the ICCL is a licensee under the above two Acts, and secondly, if the ICCL is not a licensee under the above two Acts, whether there is provisio for arbitration.

20. Clause (h) of section 2 of the Act of 1910 defines licensee, which means any person licensed under Part II to supply energy.

Sub-section (1) of Section 3 under Part II states that the State Government may, on application made in the prescribed form and on payment of prescribed fee, if any, grant, after consulting the State Electricity Board, a licence to any person to supply energy in any specified area and also to lay down or place electric supply lines for the conveyance and transmission of energy.............. As the Reforms Act of 1995 came to the statute book subsequently, this Court is to consider whether ICCL is a licensee under Act of 1910. If it is held in the affirmative, automatically ICCL will be a licensee as defined in Clause (f) of Section2 and Chapter IV of the Reforms Act, 1995.

21. As affidavit was filed on 16-7-1997 on behalf of ICCL enclosing various documents. Fom the letter dated 14-7-1984 it appears that ICCL made a request to the Government for allowing the ICCL to have a captive power plant at Choudwar for its own power requirement at Choudwar and for its sister company IMFA. It was also proposed that the surplus power generated at the captive power plant would be fed to grid at Choudwar of the then QSEB and that IMFA AND PPL would be allowed to draw the eqivalent amount of power from the grid. From the letter of the Government dated 13-8-1984 to ICCL, Government on principle raised no objection to the proposal subject to finalisation of commercial terms to the satisfaction of the then OSEB and the Government. From the letter dated 3-12-1985 from OSEB to ICCL, it appears that the Board conveyed its no objection to the proposal of captive power plant subject to approval of C&W u/s 44(2A) of the Act, 1948 and agreement with the Board regarding commercial and technical terms for interconnection and wheeling of power as per Board''s power and Government decision. In the letter dated 10-1-1986, from the then OSEB, ICCL was informed that as per system voltage frequency variation will be as per Rule 54 and 55 of the Rules of 1956 namely frequency of 50 H, + 3%.

22. There is no dispute that in terms of the above correspondences the captive power unit was installed.

23. Section 44 of the Act, 1948 imposes restriction on establishment of new generating stations or major additions or replacement of plant in generating stations. In the case in hand, this Court is only concerned with the establishment of new generating station. Subsection (1) of Section 44, inter alia, provides that notwithstanding anything contained in any other law for the time being in force or in any licence, but subject to the provisions of the Act, it should not be lawful for a licensee or any other person not being the Central Government or any Corporation created by the Central Government or any generating company except with the previous consent in writing of the Board to establish or acquire a new generating station. In view of the subsequent Memorandum of Understanding between the ICCL and the then OSEB dated 15-11-1994 and the agreement (Annexure E/1) which has been annexed by the GRIDCO, there cannot be any dispute that consent as required under S. 44 of the Act of 1948 was obtained, otherwise the Memorandum of Understanding could not have been signed and agreement could not have been entered into. From Ihe said agreement, it appears that the Board not only agreed to wheel energy generated by the captive power plant but also agreed, inter alia, to allow IMFA to draw power from the grid. In the memorandum of undertstanding dated 15-11-1994,

it was agreed that in case PPT agreed to terminate their agreement with the then OSEB for supply of power, ICCL would be their sole supplier.

24. From the above, it is absolutely clear that ICCL is a licensee under the Act of 1910 and it continued to be a licensee even after the Reforms Act, 1995 came into force. In this connection, reference may be made to Sub-section (I) of Section 14 of the Reforms Act, 1995 which provides that no person other than those authorised to do so by licence or by virtue of exemption under the Act or authorised or exempted by any other authority under the Act of 1948 shall engage in the Stale in the business of transmitting or supplying electricity. As ICCL has already been authorised as a licensee, in view of the above section 14 of the Reforms Act, 1995, it shall continue to be a licensee.

25. Section 37 of the Reforms Act, 1995 provides that any dispute arising between licensees or in respect of matters provided u/s 33 of the Act shall be referred to the Commission, and the Commission may proceed to act as arbitrator or nominate arbitrators to adjudicate and settle the dispute. Accordingly, ICCL filed an application on 25-2-97 before the Regulatory Commission, raising a dispute. On receipt of the said application the Regulatory Commission issued the notice dated 17-3-97 to the GRIDCO informing that the application of ICCL was treated as reference u/s 37(1) read with Section 33 of the OER Act, 1995. GRIDCO was requested to give its comment by 15-4-1997, Objection was also filed on 15-4-97 by GRIDCO before the Regulatory Commission, but no objection was raised regarding (he jurisdiction of the Regulatory Commission. By letter dated 21-5-1997, Secretary of the Regulatory Commission informed the ICCL that their petition was not in accordance with the provisions contained in the Orissa Electricity Commission (Conduct of Business) Regulations, 1996. In the penultimate paragraph of the said letter, the ICCL was informed as follows :

"In this connection it is seen that Section 37(1) refers only to dispute between the licensees and in respect of matter of consumer protection. As you are not a licensee nor have you approached as a consumer it appears that your petition cannot be taken up as a reference u/s 37(1) of the OER Act. 1995."

Though in the last paragraph, ICCL was requested to clarify on the above so that a format proceeding can be drawn up for placing the matter before the Commission, but the above paragraph would show that Commission had already made up its mind that the petition by ICCL was not maintainable.

26. Section 10 of the Reforms Act, 1995 states that the Commission, for the purposes of any inquiry or proceedings under the Act, shall have the powers as vested in a civil court under the Code of Civil Procedure, 1908. According to S. 52 of the Reforms Act, 1995, all proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of Section 195 of Chapter XXVI of the Code of Criminal

Procedure, 1973. Thus, this Court has no hesitation to hold that the Commission is a quasi judicial body. Therefore, before informing the ICCL that the application was not maintainable, both the parties should have been heard. So, the above letter is against the principle of natural justice and is liable to be quashed.

27. Though subsequently, possibly realising the position, a proceeding has been re-started by the Regulatory Commission, this Court is of the opinion that no useful purpose would be served by remitting the matter to the Regulatory Commission in view of the above letter informing the ICCL that the matter is not arbitrable, This Court holds that the above letter amounts to refusal of the statutory arbitrator to act in terms of the provisions of law. Therefore, Sub-section (6) of Section 11 of the Arbitration Act, 1996 is attracted and it is a fit case for exercise of jurisdiction by this Court for appointment of an arbitrator.

28. The next point to be considered is, submission of Mr. Panigrahi that after Reforms Act, 1995 came into force, a consumer for his grievance against GR1DCO, has to go to civil court and the provisions of Acy of 1910 or Act of 1948 shall not apply. According to the learned counsel, Regulatory Commission has to frame regulations u/s 33 of the Reforms Act, 1995 for this purpose, which has not yet been done.

29. Sub-section (1) of Section 33 of Reforms Act, 1995 contains three clauses for the purpose of framing rules and regulations. None of the clauses empowers the Commission to frame regulations to settle the disputes between a consumer and GRIDCo. Therefore, this section is not attracted.

30. Though ICCL, as held earlier, was a licencee before the Reforms Act, 1995, came into force, it is necessary to consider Section 15 of the Reforms Act and read with the Schedule of Act of 1910 to decide this point.

31. Clause (a) of Sub-section(4) of Section 15 of Reforms Act, 1995 mandates a licencee to comply with the requirements of Act of 1910 and Act of 1948 and the rules framed thereunder. In other words, while granting a licence, after Reforms Act, 1995 came into force, the licensee shall have to comply with the provisions of the two Acts and rules framed thereunder.

32. Clause VI(3) of the Schedule provides for arbitration where any difference or dispute arises as to the amount of energy to be taken or guaranteed or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the position of the meter board or as to the improper use of energy etc. As GRIDCO is a licensee and successor of the State Electricity Board in view of Clause (f) of Sub-section (2) of Section 3 of the Act of 1910, the above Clause VI(3) of the Schedule will be attracted in case there is any dispute between the consumer and GRIDCO. As according to Mr Panigrahi ICCL is only a consumer, if his submission is accepted, it cannot be said that ICCL has no other alternative than to go to civil court in view of what has been stated above.

33. Reference has been made by the learned counsel for the GRIDCO to a

decision of the Apex Court to The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, . According to the facts of that case, earlier Government used to generate and supply of electric energy to consumers, but thereafter, State Electricity Board was formed and it revised the rates in 1953-1956 before Sections 5, 49 and 76 of Act of 1948 came into Mysore. There was a dispute and it was held that position in 1953-1956 was that Government of Mysore was free to contract with consumers of electric energy to supply at such rates as it thought fit and as the matter rested in the region of contract, express or implied or on the unilateral action of the State Government it was outside the Act of 1948 and therefore. Section 76 of 1948 Act would not be attracted. Section 76 of 1948 "Act provides for arbitration where any question or matter under that Act requires to be referred to arbitration. This ratio is not relevant for the present purpose.

Learned counsel for the GRIDCO referred to another decision of the apex Court in Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another, . It was held, inter alia, with reference to Section 52 of the Act of 1910 that matters which are directed by the Act as determinable by arbitration only can be decided by arbitration and no other provisions of Electricity Act override the provisions of the old Arbitration Act. The Court had no occasion to decide the question with reference to the new Arbitration Act, 1996. In any event, the facts are different inasmuch as the respondent gave an undertaking regarding payment of arrear dues but electricity was disconnected though according to respondent, payment was made as per the agreement. The Court had no occasion to make any reference to Section 19 of the Act of 1910. In any event, as this Court has already held that even under Act of 1910, accepting the contentions of the learned counsel for the GRIDCO that ICCL is a consumer, the present dispute is arbitrable. In that case for disconnection of electricity, reference for arbitration was sought for. According to apex Court Section 43 of the Old Arbitration Act, would not be applicable to statutory arbitration under the provisions of the Act of 1910. In the case in hand, it has already been held that the matter is arbitrable under Reforms Act, 1995 and also Act of 1910. Therefore, the ratio laid down by the apex Court in that case shall not apply to the case in hand.

Learned counsel for the GRIDCO has placed before this Court the decision of the apex Court in Punjab State Electricity Board, Mahilpur Vs. M/s. Guru Nanak Cold Storage and Ice Factory Mahilpur and another, . The apex Court in the case considered Section 19 of Act of 1910 and held that the damage which ''ensued disconnection is not a dispute arising u/s 19(1) of the Act of 1910. According to apex Court, Section 19(1) regarding arbitration, would be applicable if any damage is caused to the owner of the property or the person affected in execution of the works undertaken as envisaged in Part II of the Act of 1910. In view of the above law laid down by the apex Court, Section 19 of the Act of 1910 would not be applicable to the case in hand as the present dispute is not a dispute falling under Part II of Act of 1910.

34. Learned Single Judge of Karnataka High Court in Mysore Manufacturers and Traders, Bangalore v. State of Karnataka, AIR 1982 Kant 54, also considered Section 19 and held that this section would be attracted if the dispute is in relation to work undertaken in Part II of Act of 1910.

35. In reply to the submission of the learned counsel for GRIDCO, Ms. Indira Jaisingh has urged that u/s 24 of Act of 1910, there cannot be disconnection of supply of energy if there is a dispute between the parties. Though learned counsel for GRIDCO has urged that there - is no such dispute, from the pleadings and facts recorded, I find there is a dispute in the case in hand.

36. Learned counsel for ICCL, has placed before this Court a decision of Division Bench of this Court in Orissa Fibre, Cuttack v. Orissa State Electricity Board, AIR 1973 Orissa 104, wherein this Court considered the said Section 24 and held inter alia that when there is a bona fide dispute raised by the consumer, it cannot be said that the consumer has neglected to pay his dues and in such a case no action can be taken u/s 34 of the Act of 1910. Learned counsel also placed reliance on two decisions of Bombay High Court (Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd., and Maharashtra State Electricity Board Vs. Madhusudandass and Brothers,) and one decision of Allahabad High Court (Hindustan Aluminium Corporation Ltd. Vs. The U.P. State Electricity Board,). As the above decision of this Court was rendered by a Division Bench and as I do not find any reason to take a contrary view, it is binding on a single Bench of this Court.

37. The existence of Memorandum of Understanding as quoted in the relevant portion of the judgment is not disputed. It is also not disputed that frequency in our country is supplying electricity has been fixed at 50 No. = 3%. It is also not disputed that GRIDCO has failed to maintain the above frequency and, therefore, ICCL could not find in the grid power generated as per the agreement. Though according to the learned counsel for GRIDCO, GRIDCO has nothing to do with maintaining frequency, learned counsel for ICCL has placed reliance on some documents to show that GRIDCO failed to maintain its grid discipline. I am not inclined to give any opinion on the contentions raised by the parties as it is for the Arbitrator to decide this point.

38. From what has been stated above, I hold that there is a dispute between ICCL and GRIDCO which is arbitrable, mat it is within the jurisdiction of the Regulatory Commission and also arbitrable u/s 3 read with the Schedule of the Act of 1910, and that the Regulatory Commission failed to arbitrate in the matter and/or failed to appoint an Arbitrator.

39. Considering the entire matter, including the amount involved, I deem it fit and proper that this matter should be referred to an Arbitrator holding a high position in the Judiciary.

I nominate Hon''ble Mr. Justice Aziz Mushabber Ahmadi, Former Chief Justice of India, at present residing at C/3, Kant Enclave, Karnisingh Shooting Range, Delhi-

Haryana Police Check Post, Anangpur, Faridabad, Haryana (Telephone Nos. 0129-8251291 and 0129-8251293) as Arbitrator. The Hon''ble Arbitrator will fix the terms and conditions including remuneration for the Arbitration Proceedings which shall be borne equally by both the parties.

As Mr. Panigrahi, learned counsel for the GRIDCO, is insisting for an interim order, I request the Hon''ble Arbitrator to pass appropriate orders or send report to this Court for passing further orders. I direct that the prayer for interim order may be renewed before the Hon''ble Arbitrator who may consider passing appropriate orders u/s 17 of the Act of 1996. The stay order passed by this Court shall continue till the prayer for interim order is heard and disposed of by the Hon''ble Arbitrator. Parties shall appear before the Hon''ble Arbitrator after obtaining his Lordship''s convenience.

40. The M.J.C. and both the Misc. Appeals are disposed of accordingly.

Copy of this order be sent to the Hon''ble Arbitrator by Speed Post at the cost of the ICCL. Requisites shall be filed within a week.

