
(1987) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5413, 8070 and 9059 of 1982, 665 etc. of 1983, 487 and 16554 of 1984 and W.A. No. 583 of 1986

Grindwell Norton Ltd.

APPELLANT

Vs

Andhra Pradesh State Electricity Board, Hyderabad and Others

RESPONDENT

Date of Decision : 27-11-1987

Acts Referred:

Constitution of India, 1950 — Article 133
Contract Act, 1872 — Section 56
Electricity (Supply) Act, 1948 — Section 33.1, 33.2, 49
Electricity Act, 1910 — Section 22B

Citation : AIR 1989 AP 14

Hon'ble Judges : Upendralal Waghray, J; Jeevan Reddy, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; V.R. Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Jeevan Reddy, J.—Two questions arise in this batch of writ petitions filed by Grindwell Norton Ltd., Tirupati, a Public Limited Company, having its factory at Karkambadi village of Chandragiri Taluk, in Chittoor District. They are :

- i) what are the minimum charges payable by the petitioner under the agreement entered into by it with the respondent-Electricity Board? And
- ii) whether the petitioner is relieved of the obligation to pay the minimum charges on account of the interruptions in, and irregular voltage of the power supplied?

These questions have to be answered with reference to the terms and conditions of the agreement entered into between the petitioner and the Electricity Board, and the relevant terms and conditions of supply which, indeed, constitute terms of agreement between the parties.

2. I. Factual Matrix :

On 1-10-1977 the petitioner applied to the Electricity Board requesting it to confirm that the Board will be able to meet the petitioner's power requirements, and to issue a letter in that behalf so as to enable the petitioner to apply for the letter of intent. The petitioner stated in its application that it is having plants in Bombay and Bangalore manufacturing "Bonded Abrasives" and Silicon Carbide, and that it wishes to set up an additional unit to manufacture 5,000 tonnes per year Silicon Carbide in Andhra Pradesh for an export oriented project. It was submitted that the petitioner requires continuous and uninterrupted supply of power, and that its power requirements will be 2,950 KVA in the first phase, and 5,600 KVA in the second phase. It stated that it preferred supply voltage at 66 KV, or alternatively at 11 KV. It was stated that the petitioner is a power consuming industry. requiring continuous and uninterrupted supply of power for three shifts for the proper growth of Silicon Carbide-Crystals. For that reason, it requested for a concessional power tariff.

3. On 14/15th October, 1977 the Secretary to the Board replied to the petitioner assuring the supply of power for setting up a Silicon Carbide plant in Andhra Pradesh. It was, however, stated that it is not possible to supply power at 11 KV voltage.

4. There was further correspondence between the parties, and in reply to the petitioner's letter dated 11-9-1979, the Board sent a letter dated 10-10-1979 conveying the Board's approval for the supply arrangements with the following phased maximum demand namely :

First 21/2 months : - 5.600 KVA

Next 7 months : - 10,500 KVA

and thereafter. 12,500 KVA. Meanwhile, the petitioner had selected the site and put up the plant.

5. An agreement was entered into on 24-11-1979 in the form prescribed for High Tension consumers. The form of agreement is provided in Appendix-III to the terms and conditions of supply notified by the Board u/s 49 of the Electricity (Supply) Act, 1948. It is necessary to notice the terms of the said agreement. The agreement is signed by the consumer alone; the Board merely accepts and approves it. Clause 2 says :

"I/we the above mentioned have requested the Board to supply electricity at High Tension for the purpose of manufacturing Silicon Carbide and the Andhra Pradesh State Electricity Board has agreed to afford such supply on the terms and conditions notified by them from lime to time u/s 49 of the Electricity (Supply) Act. 1948, and those hereinafter mentioned".

Under clause 3 the petitioner undertook "to take" electric power for a maximum load not exceeding the approved graded demand, as mentioned therein. The

contracted demand mentioned in the clause is 5,600 KVA for the first 21/2 months, commencing on 24-11-1979: 10,500 KVA for the next 7 months; and 12,500 KVA thereafter. Under clause 4 the petitioner undertook not to sell energy obtained from the Board, to any other person. Under clause 5. the petitioner undertook "to comply with all the requirements of the Indian Electricity Act, 1910; the Electricity (Supply) Act. 1948; the Rules thereunder, provisions of the tariffs, scale of Miscellaneous and general charges, and the terms and conditions of supply prescribed by the Board from time to time, and agree not to dispute the same". Clause 6 prescribed the date of coming into force of the agreement. Clause 7 provided that the petitioner undertook to avail supply for a minimum period of five years from the date of coming into force of the said agreement. Clause 8 provided that the agreement can be determined by the petitioner giving one year's notice of its intention at any time after the expiry of four years from the date of agreement. The Board was, however, entitled to terminate the agreement at any time by giving one week's notice only in case of violation of the terms of agreement, or the terms and conditions of supply, by the petitioner. The said agreement was to remain in force until terminated in the manner indicated. Clauses 9 to 12 are significant, and must be extracted in full :

"9. Obligation of Consumer to Pay All Charges Levied by Board :

From the date this agreement comes into force I/we shall be bound by and shall pay the Board maximum demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the tariffs applicable and the terms and conditions of supply prescribed by the Board from time to time for the particular class of consumers to which I/we belong.

10. Board's Right to Vary Terms of Agreement:

I/we agree that the Board shall have the unilateral right to vary from time to time, tariffs, scale of general and miscellaneous charges and the terms and conditions of supply under this agreement by special or general proceedings. In particular, the Board shall have the right to enhance the rates chargeable for supply of electricity according to exigencies.

11. Monthly Minimum Charges ;

I/We shall pay minimum charges every month as prescribed in tariff and terms and conditions of supply even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by me/us even if electricity is not consumed because supply has been disconnected by the Board because of nonpayment of electricity charges, pilferage or other malpractices or for any other valid reason.

12. Special Annual Minimum Charges ;

In consideration of the Andhra Pradesh State Electricity Board making arrangements for supplying electrical energy to me/us I/we agree with effect

from the date of commencement of this agreement for the period of five years to guarantee a minimum payment every year towards demand and energy charges only, exclusive of payments towards surcharge, meter rents or other payments by whatever name they may be called as follows : --

Sl. No. Period

Monthly minimum Guarantee Annual Minimum Guarantee

From To

Rs. Rs.

1. First 216 months (From the date of supply) : 4.74.310 56,91.120

2. Next 7 months: 8,89.332 1.06,71.984

3. Afterwards : 10,58.728 1.27.04.736

If the amounts actually paid towards demand energy charges during any year fall short of the guaranteed minimum, the amount of deficit shall be deemed to be as arrears of electricity charges and recovered accordingly".

6. A reading of clause 9 shows that the petitioner agreed to be bound by, and to pay the Board maximum demand charges, energy charges, etc. in accordance with the tariffs applicable, and the terms and conditions of supply notified from time to time. Under clause 10, it agreed that the Board shall have the unilateral right to vary from time to time tariffs, scale, and miscellaneous charges, and the terms and conditions of supply under the agreement, including in particular the rates chargeable for supply of energy, according to exigencies. Under clause 11, which is common to all categories of consumers, the petitioner has undertaken to pay minimum charges every month as prescribed in tariff and terms and conditions of supply, even if no electricity is consumed for any reason whatsoever, and also where the charges for the electricity actually consumed are less than such minimum charges. While clause 11 deals with "monthly minimum charges", clause 12 relates to "special annual minimum guarantee." Under clause 11(12) the petitioner undertook, in consideration of the Board making arrangements for supply of electrical energy to it, to guarantee a minimum payment every year towards demand and energy charges only, exclusive of payments towards surcharge, meter rents, and other payments. The Table contained in the said clause mentions not only the minimum annual guarantee but also monthly minimum guarantee, for the first 21/2 months, then for the next 7 months, and also for the period thereafter. The amount mentioned in the Table is calculated at the rate then obtaining, on the maximum demand approved for the petitioner. In other words, the monthly minimum guarantee for the first 21/2 months is Rs. 4,74,310/-, and the annual minimum guarantee Rs. 56,91,120/-. These are charges for 5,600 KVA per month, or per annum, as the case may be. Similarly, the charges for the next 7 months are calculated on a maximum demand of 10,500 KVA, and the annual minimum guarantee payable

thereafter is calculated on 12,500 KVA. We are told that there are 403.325 units in each KVA, and the tariff rate for each unit on the date of the agreement was 0-21 paise. Thus calculated, the charges for 12,500 KVA per month are stated to be Rs. 10,58,728/-.

7. Coming back to the terms of agreement, under clause 13 the petitioner undertook not to indulge in theft of energy, or any other malpractice.

8. Though according to the agreement the petitioner was to avail energy at 10,500 KVA with effect from 10-2-1980 (i.e.. 21/2 months after the commencement of the agreement), the petitioner continued to avail energy only at 5,600 KVA till 31-7-1980. This was for the reason that the Board was facing an acute shortage of power, which obliged it to resort to frequent load shedding both for industries, as well as for agricultural services. On 9-1-1980, the Chief Engineer of the Board informed the petitioner that it may not be possible to release the enhanced demand of 10,500 KVA from 20-1-1980 as requested by the petitioner in its letter dated 29-12-1979 "due to difficult power position". In spite of this letter, the petitioner continued to press the Board to release supply at 10,500 KVA, but with no effect.

9. The Board lifted all restrictions on consumption of energy with effect from 31-7-1980. What happened hereafter is a matter of dispute between the parties. While the Board says that it was ready to release 10,500 KVA with effect from 1-8-1980 but the petitioner was not prepared to take it, the petitioner says that it was not possible to avail of energy at the agreed level on account of low voltage and other irregularities in the power supply. According to the Board further, on 4-10-1980 it called upon the petitioner to avail energy at 12,500 KVA, since the availability of energy had improved. On that date petitioner was availing only at a far lesser level, i.e., at 7,600 KVA. Be that as it may, on 6-12-1980 the petitioner wrote to the Chief Engineer of the Board requesting for raising the contracted demand of the petitioner to 10,500 KVA, immediately. It also informed the Board that it will take another six months or so to stabilize the process parameters, and that it will request for the balance of 2,000 KVA by May, 1981 to make up the total contracted demand of 12,500 KVA. On 24-12-1980 the Board approved the release of 10,500 KVA. The petitioner says, even after December, 1980, the power supply was suffering from low voltages, and that it was far beyond the permissible limits as per the Indian Electricity Rules. On 6-6-1981 the petitioner asked for reduction of maximum demand to 8,000 KVA, to which the Board did not agree.

10. On 31-7-1981 the petitioner wrote to the Board to defer increasing its contract demand and billing on the basis of 12,500 KVA, and to continue supply at 10,500 KVA only "till such time that the supply voltages improve to the standard and the interruptions are eliminated to enable us to avail of all the energy required at the existing demand". The Board agreed to this proposal on 24-8-1981.

11. On 14-6-1982 the Chief Engineer of the Board wrote to the petitioner requesting it to avail of the additional demand at 2,000 KVA immediately, as per the agreement. The letter reads as follows : --

"Please refer to your letter cited above (dated 31-7-1981) wherein you have requested to defer increase in contracted demand from 10,500 KVA to 12,500 KVA due to low voltages prevailing at Renigunta. As requested by you, increase of contracted demand was deferred.

Since the voltage at 132 KV sub-station Renigunta sufficiently improved and are within statutory limits, you are requested to avail additional demand of 2,000 KVA immediately as per your contractual obligations.....".

It appears that the petitioner wrote to the Board on 8-7-1982 to defer the supply at 12,500 KVA, to which, apparently, the Board did not agree. It is, however, necessary to mention that there is no controversy between the parties with respect to the payments to be made for the period up to July, 1982. The controversy really begins from July. 1982.

12. Pausing here for a moment, we may mention that the tariff rates were being revised from time to time. Tariff rate for H.T. Consumers was 0-21 paise per unit on the date of agreement between the parties, as stated above. On 1-11-1980 it was raised to 0-25 paise; on 15-7-1981 it was raised to 0-32 paise on 15-1-1984 it became 0-45 paise, and ultimately on 15-7-1987 it is raised to 0-83 paise per unit. Besides tariff, the Board also levies surcharge, which is revised every quarter. The surcharge is meant to defray the rise in cost of production of energy.

13. For the month of July, 1982, the Board sent the bill in a sum of Rs. 13,55,172/-. This sum was arrived at on the basis of 10,500 K V A, applying the tariff rate in force on that date, i.e. 0-32 paise per unit. This gave rise to the first of the writ petitions in this batch, i.e. W. P. No. 5413/82. The petitioner's case was that it was liable to pay only a sum of Rs. 10,77,888/- for the said month, which represents the charges for the power actually consumed by it for the said month. In this writ petition, the petitioner complained of frequent interruptions, cutoffs, low voltage and other irregularities in the supply of energy, and contended that according to the Memo dated 29-1-1980 issued by the Electricity Board revising the billing procedure during the periods of restrictions, the bill must be sent only for the actual energy consumed, and not upon the contracted load.

14. The next writ petition, i.e., W. P. No. 8070/82, pertains to October 1982. For this month, the Electricity Board sent a bill in a sum of Rs. 15,14,243-95 Ps., while according to the petitioner it is liable to pay Rs. 6,58,632.53 Ps. only on the basis of actual energy consumed. Indeed, it appears that for a period of about 15 days there was a strike in this factory in the month of October, 1982.

W. P. No. 9059/82 pertains to November, 1982;

W. P. No. 665/83 to January, 1983; W. P. No. 1632/83 to February, 1983; W. P.

No. 4704/83 to May, 1983; W. P. No. 487/84 to December, 1983; W. P. No. 3005/84 to January, 1984; W. P. No. 5144/84 to February, 1984; W. P. No. 6790/84 to March, 1984; W. P. No. 8220/84 to April, 1984; W. P. No. 8766/84 to May, 1984; W. P. No. 10851/84 to 1984; W. P. No. 12203/84 to July 1984, and W. P. No. 16554/84 to 1984.

It is really unnecessary to mention the particulars of each month. Suffice it to say that the Board was sending the bills on the basis of 10,500 KVA up to, and inclusive of November 1983, applying the tariff rate then in force. From December 1983 it started sending the bills on the basis of 12,500 KVA, again applying the tariff rate in force for the time being. All the while the petitioner was contending that it is liable to pay only on the basis of energy actually consumed. It is relevant to notice that the Board was sending the bills up to, and inclusive of November 1983 only on the basis of 10,500 KVA, notwithstanding its letter dated 14-6-1982, calling upon the petitioner to avail energy at 12,500 KVA as per the agreement. Meanwhile, correspondence was going on between the officials of the Board as to whether the petitioner should be charged for 12,500 KVA, and if so, with effect from which month? Ultimately, on 12-9-1985 the Board sent a revised bill in a sum of Rs. 43,90,771.35 Ps. representing the difference between the charges on the basis of 10,500 KVA, and 12,500 KVA for the period July 1982 to November, 1983. This demand was immediately questioned by the petitioner in W.P. No. 12064 of 1985. This writ petition has been allowed by a learned single Judge of this Court, holding that according to Clause 12 of the agreement between the parties, the Board is not entitled to demand minimum charges exceeding Rs. 10,58,728/- per month, and accordingly quashing the said demand in a sum of Rs. 43 Lakhs and odd. Against the decision of the learned single Judge, the Board has preferred Writ Appeal No. 583/1986.

15. II. Contentions of the Parties :

Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, urged the following contentions :

(i) Clause 12 of the agreement specifically provides the minimum charges payable by the petitioner for the first five years. Nothing* more can be collected by way of minimum charges during the said period. If the charges for energy actually consumed go above the said minimum, the petitioner shall undoubtedly pay the same; but, if the charges for energy actually consumed fall below the said minimum, the petitioner is liable to pay only such minimum.

(ii) Clause 12 being a special stipulation prevails over Clause 11 and supersedes it to the extent of inconsistency. In other words, the monthly minimum cannot be varied with reference to the tariff for the time being in force, as per Clause 11.

(iii) The petitioner's industry is a power intensive unit, and its line of manufacture requires continuous, un-interrupted supply of energy. Any interruption or break-down in supply of energy leads to serious production loss and also affects the quality of the product. Inasmuch as there were frequent

interruptions, breakdowns, low voltages and other irregularities in the supply of energy from the very beginning of the agreement, the petitioner's obligation to pay minimum charges, whether under Clause 12 or Clause 11, is no longer enforceable. In such a case, the petitioner is liable to pay only the charges for the energy actually consumed, and nothing more ; and

(iv) that, for reasons (i) and (ii) mentioned above, the demand made towards the difference of amount for the period July 1982 to November, 1983, has been rightly quashed by the learned single Judge in W.P. No. 12064/85.

16. Sri V. R. Reddy, the learned Standing Counsel for the Electricity Board, while disputing the correctness of the contentions urged by the petitioners, submitted :

(i) that the concept of minimum charges has to be understood in the context of Condition 33 of the conditions notified u/s 49 of the Electricity (Supply) Act. Minimum charges represent not merely the capital cost of the plant and machinery maintained by the Board, but also include salaries and wages of its employees and staff, general reserve, interest on loans, and other fixed expenses. These items vary from time to time; these are the charges referred to in Clause 11 of the agreement; Clause 11 expressly says that minimum charges shall be payable as prescribed in tariff, and terms and conditions of supply. This obligation is absolute, as stated expressly in Condition 33.2. The preparation of the bill applying the tariff rate in force is, therefore, perfectly in order;

(ii) Clause 12 cannot override or supersede Clause 11. Clause 11 creates an absolute and primary obligation to pay minimum charges as per the tariff for the time being in force. Clause 12 deals with an altogether different aspect, viz., special annual minimum guarantee. In many cases the relevant columns in Clause 12 are not at all filled. Merely because in the case of the agreement the columns are filled applying the rate in force on the date of agreement, it does not follow that all other clauses in the agreement and conditions of supply have to be ignored. The amounts mentioned in Clause 12 constitute the consideration for making arrangements for the supply of electrical energy to the petitioner, and have nothing to do with the minimum charges contemplated by Condition 33 and Clause 11 of the agreement;

(iii) that the interruptions or break-downs, if any, are minimal, and for reasons beyond the control of the Board. These things are neither unusual, nor un-contemplated by the parties. Condition 41, indeed, provides for such a situation. Reading the agreement and the conditions together, the alleged interruptions or break-downs, if any, do not relieve the petitioner of the obligation to pay the minimum charges under Clause 11, or the obligation to honour the annual minimum guarantee under Clause 12. Moreover, the interruptions have been very infrequent; they do not represent a power cut, but only a local request, which the petitioner did not actually respect. Yet, for such interruptions, the Board is prepared to give a proportionate rebate, though it is not really obliged to do; and

(iv) that the learned single Judge was in error in quashing the demand (subject-

matter of W. P. No. 12064/851. The learned Judge was not right in giving precedence to Clause 12 to the complete exclusion of Clause 11. The learned Judge ought to have considered the agreement and the conditions together, and not given undue prominence to Clause 12 alone to the extent superseding every other clause in the agreement and the conditions of supply. The petitioner is bound to pay minimum charges on the basis of 12,500 KVA, from July 1982.

17. III. Relevant conditions of supply :

Section 49 of the Electricity (Supply) Act, 1948, empowers the Board to supply electricity to any person, not being a licensee, upon such terms and conditions as the Board thinks fit. For this purpose it is empowered to frame uniform tariffs. This power is, no doubt, subject to the provisions of the Act and the Regulations, if any, made thereunder. The A.P. State Electricity Board has, accordingly, notified the terms and conditions of supply in B.P.Ms. No. 690, dated 17-9-1975. The conditions have been amended from time to time. Condition 24 deals with charges for supply. Condition 24.1 says :

"The price and the methods of charging for supply of electricity shall be those as fixed by the Board from time to time".

Condition 24.3 says :--

"The consumer shall pay to the Board every month..... charges for the electrical energy supplied to the consumer during the preceding month, at the tariff in force from time to time with such revision, increasing or decreasing rates.....".

Condition 25.1 confers upon the Board the unilateral right to vary from time to time the terms and conditions for supply of electricity by special or general proceedings. Condition 25.3 says that the tariffs prescribed by the Board are liable to be increased in or about July every year, or at any time during the year, as may become necessary and as may be decided by the Board on account of increase in cost of generation and supply of electricity due to increase in the cost of fuel and other material, increase in salaries and wages of staff, interest charges, or increase in any other expenses. The miscellaneous and general charges are also liable to be increased for the same reasons. Condition 26.1 says that every consumer shall execute an agreement in the prescribed form. Condition 26.6 deals with period of agreement for high-tension supply. It says, the minimum period of agreement for H.T. supply shall normally be five years, and that the agreement shall continue to be in force till it is terminated by either party in accordance with condition 26.8. It further says that in respect of agreements providing for special annual minimum guarantee by the consumer, the period of agreement may be from 5 to 10 years, as approved by the Board. It further provides "in such case, the amount of special annual minimum guarantee shall be arrived at by dividing the capital cost of the works for making supply available to the consumer by the number of years of the agreement". Condition 26.8 provides for termination of agreement. It is in the same terms as

Clause 8 of the agreement concerned herein. Condition 33. which is quite important for the purpose of these cases, reads thus : --

"33. 1 : Minimum charges are required to be paid by the consumers to cover fixed charges incurred by the Board for affording supply such as depreciation, general service, interest and salaries and wages and other fixed expenses etc. The minimum charges now prescribed do not fully cover the above fixed charges.

33.2 : Minimum charges shall be payable by the consumer as specified in the tariffs for different categories of consumers. This obligation shall be absolute. The minimum charges will be payable by consumer even if no electricity is actually consumed, for any reason whatsoever and also if the charges for electricity consumed are less than the minimum charges. The minimum charges will be payable even if electricity is not consumed because supply has been disconnected by the Board because of non-payment of electricity charges, pilferage, other malpractices or for any other valid reason".

18. A reading of condition 33.1 makes it clear that the minimum charges are required to be paid by consumers to cover fixed charges. "Fixed charges" mean charges required for affording supply of energy by the Board, such as depreciation, general reserve, interest, salaries and wages of staff and other fixed expenses. Condition 33,2 expressly states that the minimum charges shall be payable by consumers as specified in the tariffs, and that the said obligation shall be absolute. Minimum charges are payable even if no electricity is consumed, or even where the charges payable on the basis of actual consumption are less than the said minimum. Condition 41 says :

"The Board shall endeavour to afford continuous supply and to restore interrupted supply as early as possible. The Board shall have the right to stagger or curtail supply of electricity to any consumer or consumers according to operational or other contingencies. The Board shall not be responsible for any loss or inconvenience occasioned to any consumer by any interruption of supply of any kind, whatever be the reason therefor".

This condition while obliging the Board to endeavour to provide continuous supply, also recognizes that there may be interruptions, that there may be curtailment of supply of electricity to any consumer for any operational reasons or on account of other contingencies. It also gives the Board the right to stagger the supply of electricity for operational or other reasons. The condition further provides that the Board shall not be responsible for any loss or inconvenience occasioned to any consumer by any interruption of supply of any kind, whatever be the reason therefor.

19. Tariffs are notified by the Board from time to time. The first tariff notified for highly power intensive industries is contained in the Memo dated 18-11-1975. Paragraph 3(ii) of the Memo reads as follows : --

"(ii) Monthly Minimum Charges :-- Every consumer whether he consumes energy

or not shall pay monthly minimum charges calculated at 11 paise on 403.325 Units per KVA of contracted Demand or recorded demand whichever is higher during the month. The minimum charges shall be payable even if no electricity is consumed for any reason whatsoever. The minimum charges shall be payable even if electricity is not consumed because supply has been disconnected by the Board for non-payment of electricity charges, pilferage or other malpractice or for any other valid reason."

(Note : The figure 11 paise has been revised from time to time as stated hereinbefore).

20. We may mention that the petitioner has not challenged the validity of any of the conditions of supply, or of the tariffs notified.

21. IV. Concepts of Minimum Charges-Annual Minimum Guarantee and the obligation to pay minimum charges:

The Electricity Board maintains a number of plants and units generating electricity, a wide network of transmission lines. Power Stations, Sub-stations, and also employs a large number of persons, both on regular and casual basis. It has to provide for depreciation on its machinery, equipment and buildings; it has to create a general reserve; it has to pay interest on loans taken by it. Whether it generates energy at full capacity or not, it has to pay to all its staff. There are also other fixed and recurring expenses for maintaining such an organisation. The minimum charges are meant to provide for all this. Minimum charges in this sense appear to be different from generation charges, but really speaking, and in practical terms, it means that every consumer shall consume a particular minimum quantity of power, and pay for it. With a view to make him consume the quantity undertaken, the concept of minimum charges is evolved; it is to induce and persuade him to consume the minimum quantity of energy. It is for this reason that minimum charges are tagged on to the minimum consumption. It cannot be gainsaid that the Board does not sit idle. It is engaged in constant production of energy. This energy has to be consumed. Power Intensive Industries, like the petitioner, require energy in bulk quantities. For that reason, they are also supplied at certain concessional rates as compared to other consumers. They execute an agreement undertaking to consume energy in a particular quantity. Under Clause 3 of the agreement, the petitioner has undertaken "to take from the A. P. State Electricity Board electric power for a maximum load not exceeding the approved graded demand given below which shall be taken to be our contracted demand.....". Reference in this connection may be made to the following observations of the Supreme Court in *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, :-

"Moreover it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of Order 5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the

plaintiff had to keep everything ready so that power is supplied the moment the switch was put on. In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses.....".

22. Annual Minimum Guarantee in Clause 12 of the agreement has to be understood in the light of condition 26.6. which condition prescribes the manner in which Annual Minimum Guarantee is to be determined Condition 26.6 bears the subheading "Period of Agreement for H. T. Supply". It says that period of H. T. agreement shall be normally 5 years and that the agreement shall be in force even thereafter till it is terminated in the manner prescribed by Condition 26.8. It further says that "in respect of agreements providing for special annual minimum guarantee "..... the period of agreement may be 5 to 10 years, as approved by the Board". It then says, ""In such cases, the amount of special guarantee shall be arrived at by dividing the capital cost of the works for making supply available to the consumer by the number of years of the agreement." It would immediately be evident that concept of special annual minimum guarantee is entirely distinct and different from the concept of monthly minimum charges. They relate, and refer, to different considerations. The special annual minimum guarantee represents the cost of the works for making the supply available to consumer, divided by the number of years for which the agreement is executed. It has nothing to do with the "fixed charges" referred to in condition 33.1. It is true that in this case, while mentioning the amount in Clause 12, the true concept and meaning of special annual minimum guarantee was not kept in view, and some other figures, which by no stretch of imagination can be called "special annual minimum guarantee", were mentioned therein. Evidently, the concerned persons did not understand the meaning of special annual minimum guarantee. The agreement, it must be remembered, is executed only by the consumer (petitioner). though undoubtedly approved by the Board. But just because some wrong figures are mentioned in Clause 12, under a mistake or misapprehension, it does not and cannot mean that it should alter the very substance, meaning, and purport of the entire agreement. The agreement herein is not one specially drafted for this consumer. They merely adopted the pro forma prescribed in Appendix III to Conditions. All that has happened is that some unconcerned and irrelevant, figures were put in Clause 12. Those figures do not represent special annual minimum guarantee. In fact, special annual minimum guarantee does not contemplate different amounts for different periods. It only contemplates capital cost of works for making the supply available, being divided by the number of years for which the agreement is executed. It is that figure that should be mentioned in Clause 12. All that Clause 12 says is that the charges payable by the consumer towards demand and energy charges should not fall below the special annual minimum guarantee, mentioned in Clause 12. The confusion in this case is created by the particular and erroneous figures mentioned in the Table in Clause 12, which figures are arrived at by multiplying the relevant

contracted/maximum demand with the tariff then in force. This mistake cannot have such a major consequence, as held by the learned single Judge.

23. Having clarified the concepts of Monthly Minimum charges, and Special Annual Minimum Guarantee, let me now consider the terms of agreement. Under Clause 9 of the agreement, the petitioner has undertaken to pay to the Board maximum demand charges, energy charges, surcharge, meter rents, and other charges, if any, in accordance with the tariffs applicable, and the terms and conditions of supply prescribed by the Board from time to time, for petitioner's category of consumers. Under Clause 10, the petitioner has recognized and affirmed the Board's unilateral right to vary the tariff and scale of general and miscellaneous charges, and the terms of supply unilaterally. It has expressly recognized the Board's right to enhance the rates chargeable to supply of electricity according to exigencies. It has also undertaken, under Clause 11, to pay minimum charges every month as prescribed in the tariff. If these were the only provisions, it is not disputed by Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, that the petitioner would be liable to pay the minimum charges, as billed by the Board; (subject, of course, to his other argument that the petitioner is relieved of this obligation because of interruptions, break-downs, and low voltage, etc.). What he really contends is that Clause 12 is in the nature of a special stipulation between the parties which overrides and supersedes Clause 11. According to him, for determining the monthly minimum charges payable by the petitioner for the period of five years from the date of agreement, one must look only to the Clause 12, and to nothing else. On the other hand, the contention of Mr. V. R. Reddy, the learned Standing Counsel for the Board is that it is Clause 11 which is the substantive clause, and that Clause 12 has no relevance on the question of monthly minimum charges. According to him, it only deals with special annual minimum guarantee, which in no way runs counter to, or is inconsistent with Clause 11.

24. It is a well accepted rule of interpretation of documents that all clauses of the document must be read together, in harmony with each other. No clause in the deed should be held superfluous or unnecessary unless such a construction is unavoidable. Each clause must be given its due play. We must, therefore, have to read all the clauses of the agreement together, which also include the conditions notified u/s 49, as also the tariffs notified from time to time. Indeed, Clause 2 clearly says that the Board has agreed to supply energy to the petitioner subject to the terms and conditions notified from time to time, while under Clause 5 the petitioner has undertaken to comply with such terms and conditions, and the tariffs, as may be notified by the Board from time to time. The monthly minimum charges are referred to only in Clause 11 of the agreement. (Clause 12 does not refer to monthly minimum charges. It speaks only of special annual minimum guarantee, as explained above, though in the Table contained in the said clause in this particular agreement, the monthly minimum guarantee is also specified). In other words, the minimum charges referred to in condition 33 are those referred to in Clause 11 of the agreement. Both condition 33.2 and Clause 11 say

that minimum charges as specified/prescribed in tariff, shall be paid. Indeed, condition 33.2 -- which must also be deemed to be a clause of the agreement -- says expressly that this obligation to pay minimum charges as specified in the tariffs is "absolute". Now the tariffs notified by the Board say, "every consumer whether he consumes energy or not shall pay monthly minimum charges calculated at.....Paise on 403.325 Units per KVA of contracted demand or recorded demand, whichever is higher, during the month.....". These monthly minimum charges are payable even if no energy is consumed, or even where the charges for the energy actually consumed are tower than the said minimum charges. This is stated in para 3(ii) of the tariffs, Clause 11 of the agreement, and Condition 33.2 of the Conditions. The question is whether this absolute obligation attaching to the petitioner is modified or qualified in any manner by Clause 12 of the agreement? I think, not. As stated above, Clause 12 does not deal with monthly minimum charges. It only deals with special annual minimum guarantee. The monthly minimum charges, besides being conceptually different, take in not only tariff charges, but also surcharge, meter rents, and other charges, whereas the special annual minimum guarantee, confined as it is to the capital cost of works for making supply available to the consumer, is related to demand and energy charges only -- saying that those charges should not fall below the special annual minimum guarantee. Indeed, Clause 12 speaks of annual minimum guarantee, and not monthly minimum guarantee. In the pro forma prescribed by the statutory conditions, there is no column relating to monthly minimum guarantee, though in the case of the agreement concerned herein, the monthly minimum guarantee is also mentioned. But, that is nothing more than annual minimum guarantee amount being divided by 12. In my opinion, therefore, Clauses 11 and 12 both must be given effect to, and this can be done by holding that the consumer shall pay the monthly minimum charges in accordance with Clause 11, every month, and at the end of the year the Board will verify whether the amounts paid by the consumer towards demand and energy charges fall below the annual minimum guarantee prescribed in Clause 12. If it so falls, it has to be made good; otherwise, no further question arises. It is argued that in the present case no such occasion would ever arise, because the special annual minimum guarantee mentioned in Clause 12 is also calculated on the basis of the tariff rate in force on the date of the agreement, and since the tariff rate can go up but cannot go down, no occasion would ever arise of the monthly minimum charges paid under Clause 11 being less than the annual minimum guarantee, or monthly minimum guarantee, mentioned in Clause 12. Firstly as explained hereinbefore, the amounts mentioned in Clause 12 are vitiated by a mistake and misapprehension as to the true meaning of special annual minimum charges. Secondly, there is no rule that tariff charges will only go up, but would never go down. Condition 24.3 clearly envisages the tariff rates decreasing as well. Thirdly, for the reason that in the present day conditions the tariff rates are only going up, there is no reason to completely neutralize and ignore Clause 11, and give effect to Clause 12 to the exclusion of all other clauses. The obligation to pay monthly minimum charges at the tariff rate and in

accordance with the terms and conditions of supply, is undertaken by the consumer not only under Clause 11, but also under Clause 9. Moreover, under Clause 10, the Board is given the unilateral right to vary the tariffs and scales of general and miscellaneous charges, and terms and conditions of supply under the agreement, by special or general proceedings. It includes the right to enhance the rates chargeable for supply of electricity, according to exigencies. I do not think that the several stipulations in Clauses 9, 10 and 11 can be nullified or held inoperative merely because of the amounts mentioned in Clause 12 allegedly representing special annual minimum guarantee. Moreover, as mentioned hereinbefore, the petitioner has undertaken to consume energy in a particular quantity every month, and pay for it. Whether or not it consumes that quantity, the petitioner is under an obligation to pay the minimum charges at the rates in force for the time being. If Clause 12 were to prevail over Clauses 9, 10 and 11, there should have been words to that effect in that clause, which are found wanting. Clause 12 should have said that, notwithstanding anything contained in any other clause of the agreement or conditions of supply, the consumer shall be liable to pay only the amounts mentioned therein, and nothing more. In the absence of such words, it would be unreasonable to ignore all other clauses of the agreement and conditions of supply; more so when Clause 12 does not even speak of monthly minimum charges. If the agreement between the parties was that notwithstanding the enhancement of tariff rates and other charges over a period of five years, the Electricity Board has undertaken to supply energy only at the rate in force on the date of agreement, the agreement ought to have said so clearly. In the absence of clear words to that effect, the said intention or effect cannot be inferred or deduced from Clause 12. It would amount to attributing far more than what Clause 12 legitimately contemplated.

25. For these reasons, it is not possible for me to agree with the learned single Judge that the monthly minimum charges payable by the petitioner for the first five years is only that amount as is mentioned in Clause 12, and that the petitioner is not liable to pay the monthly minimum charges under Clause It, read with conditions 9 and 10 of the Conditions of Supply.

The first two contentions of Mr. K. Srinivasa Murthy are accordingly, rejected V. The effect of interruptions, low voltage etc. on the obligation to pay minimum charges:

26. The next question is whether, on account of interruptions, break-downs, and low voltages during the period of agreement, the petitioner is relieved of the obligation to pay minimum charges under the agreement, and whether its obligation is confined to payment of charges for the energy actually consumed. It is contended by Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, that from the very beginning of the agreement, the supply has been irregular, there have been frequent break-downs, low voltages, requests for reducing consumption, and so on. On account of such irregular supply, the petitioner has suffered huge losses and inasmuch as the Board has failed to live up to its

obligation to supply the power continuously and at the level and load agreed upon, it cannot at the same time hold the petitioner to the agreement and collect monthly minimum charges. Certain correspondence is brought to our notice in support of the petitioner's plea regarding interruptions, low voltages and requests for lower consumption from time to time. On the other hand, the learned Standing Counsel for the Board has placed before us a statement of interruptions, and power made available to the petitioner during the period July, 1982 to November, 1984. According to the said statement, the interruptions are not a usual phenomenon, but that they occurred only infrequently. The interruptions mainly were in the month of July, 1982. In October, 1982, the interruption is only for 18 minutes; in November, 1982 there was no interruption at all; in January, 1983 the interruptions are for a period of 10 hours 29 minutes; in February, 1983, 6 hours 36 minutes; in May, 1983, 3 hours 23 minutes; in December, 1983 there were no interruptions at all; in January, 1984 interruptions were for a period of 45 minutes, and so on. It is also pointed out that during many of these months, the actual energy consumed by the petitioner is far below the contracted load which, according to the Board's counsel, means that the petitioner could not have suffered any losses on account of such interruptions occurring now and then. In the circumstances, therefore, the duration of interruptions in a given month, or year, is not an admitted fact. There is a dispute between the parties in that behalf, which cannot be gone into or investigated in these writ petitions. According to the petitioner, its line of manufacture requires a continuous and uninterrupted supply of energy for a period of 35 to 40 hours; (vide para 3 in W.P. No. 5413/82). Though there is no clear proof of the actual loss suffered by the petitioner on account of interruptions, we can very well presume that such interruptions or low voltages may have very likely affected the production schedule of the petitioner to some extent. The question is whether the petitioner is relieved of the obligation to pay the monthly minimum charges under the agreement on account of such interruption? This question - not an easy one to answer, as remarked by the Supreme Court -- has to be examined at two levels -- one in terms of the agreement, and the other in terms of general law. There is no clause in the agreement -- like Condition 4(f) of Haryana, considered by the Supreme Court in Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, , which relieves the petitioner of the obligation to pay the monthly minimum charges, on account of interruptions. On the contrary according to Condition 41, which constitutes a term of the agreement between the parties, while the Board should endeavour to afford continuous supply and to restore interrupted service as early as possible, the Board is given the right to stagger or curtail supply of electricity to any consumer or consumers, according to operational or other contingencies. Clause 41, therefore, clearly contemplated interruptions occurring which, no doubt, have to be attended to, and supply restored as early as possible. It also contemplated situations where the supply of energy has to be curtailed, or staggered. This may be necessary both for operational reasons, as well as other contingencies arising. In all such cases, it is declared that the Board

shall not be responsible for any loss or inconvenience occasioned to any consumer by interruption of supply of any kind, whatever be the reason therefor. This condition was there even when the petitioner applied for supply of power, and when it entered into the agreement. Indeed, as stated above, this condition constitutes a term of the agreement between the parties; (vide Clauses 2 and 5 of the agreement, as also para 2 of the form of application for supply of electricity at Low Tension/High Tension, prescribed in Appendix I to Conditions). In such a situation, I find it difficult to say that merely because there were interruptions now and then, or that there was curtailment of supply on certain occasions, the petitioner is relieved of its obligation to pay the monthly minimum charges, undertaken by it under Clause 11 of the agreement, read with Condition 33. It is not suggested that the interruptions or curtailments are the result of any deliberate or mala fide action or attitude on the part of the Board or its authorities. Admittedly, they are for reasons beyond the control of the Board. It is then stated that this is the result of inefficiency, negligence, and lack of accountability on the part of the Board and its officers. It is stated that in Bombay and Delhi areas, the energy supply never fails, and that it happens frequently only in this State, and more particularly under the Renigunta Sub-Station which supplies power to the petitioner's plant. This aspect I shall deal with separately under the heading "Accountability of Public Sector Undertakings".

27. So far as general law is concerned, I do not see any grounds upon which the petitioner, while keeping the agreement alive, can contend that it is relieved of the obligation flowing from one of the clauses thereof. It is not as if the petitioner has terminated the agreement. It is also not its case that the agreement is frustrated, within the meaning of Section 56 of the Contract Act. Even after the expiry of four years from the date of agreement the petitioner has not chosen to terminate the agreement. It is continuing to avail the supply in accordance therewith. In such a situation, I am unable to see under what principles of general law of contract can the petitioner claim to be relieved of the obligation under Clause 11. Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, could not point out any particular provision in the Contract Act entitling the petitioner to do so. His contention, however, was that condition 41 merely indemnifies the Board against the claim for losses resulting to the consumers on account of interruptions in, and curtailments of supply by the Board, but that it is not relevant on this question. Firstly, it is not possible to agree, in view of the language of condition 41. Condition 41 expressly says that the Board shall not be responsible for any loss or inconvenience occasioned to any consumer by interruption of supply of any kind, whatever be the reason therefor. Moreover, even if I agree that condition 41 is not relevant on this aspect, the question still arises: under which other provision of the agreement, conditions, or general law is the petitioner relieved of the obligation under Clause 11, so long as the agreement is operative and continuing.

28. For the above reasons, I am unable to agree with the petitioner that, because of the interruptions in, and curtailment of supply, or the alleged low

voltages, the petitioner is relieved of the obligation under Clause 11, or that it is entitled to say that it is liable only to pay for the energy actually consumed. The third contention of Mr. K. Srinivasa Murthy is, accordingly, rejected.

29. VI. Accountability of Public Sector Undertakings:

In the course of arguments before us, as certain amount of discussion took place with respect to the accountability of public sector undertakings, like the A. P. State Electricity Board. It was submitted on behalf of the petitioner that in the absence of any obligation and sense of accountability on the part of these corporations, and also on account of the monopoly they enjoy in a particular field, they are operating and behaving in a manner which is the very negation of the concept of such public undertakings. It is argued that while in the case of Government, it is accountable to Legislature, judiciary and to people, these corporations are practically immune from any such accountability. It is submitted that the low efficiency, the constant and substantial losses incurred by them, low productivity, and lack of quality are the result of absence of accountability coupled with the advantage of monopoly. It is argued that instead of contributing to public good, they are proving white elephants -- leviathans in size but woefully diminutive in efficiency. This criticism, in my opinion, raises a larger issue with respect to the very concept of public sector in a mixed economy like ours. A proper discussion of this question is really beyond the scope of this case and, at any rate, the Court is not the proper forum to discuss these issues. May be there is some truth in the criticism; may be this criticism is equally relevant in the case of private sector organisations; may be this aspect is inseparable with political concepts and ideology. One may be a votary of State monopoly or a mixed economy; another may be a votary of private enterprise and privatisation of public sector.

The fact, however, remains that the performance of Electricity Boards and Road Transport Corporations in this country leaves very much to be desired. Their losses every year are stupendous. The reasons may be many and, as I have said, this may not be the proper forum or occasion to go into the said aspect. But, a few observations will not be out of order.

30. The basic proposition, which is not questioned by any one, is that the broad policies and objectives for these public undertakings should be prescribed by the Government, and within the frame work of these policies and objectives, the undertakings should operate autonomously and should be accountable to Government and Parliament/Legislature for the attainment of the prescribed objectives. But in practice, several ills and defects have come to light. There has been a good amount of debate in the country about "what ails the public sector?". The debate is increasingly focussed on the questions of autonomy and accountability of these enterprises. The Economic Administration Reforms Commission, and the Arjun Sengupta Committee, have both devoted considerable space in their Reports to these questions. The Thirty-Second Report of the Parliamentary Committee on Public Undertakings (PCPU), submitted to

Parliament on 25th August of this year, is the latest in the series. The conclusions arrived at by "PCPU", which of course are not really new, are the following: that public enterprises need operational autonomy to work efficiently; that without such autonomy the managements of these enterprises cannot be held properly accountable for their performance; that such autonomy, though granted on paper, is negated in practice by the involvement of Ministries and Departments in purely managerial matters; that such involvement is mostly informal, the formal powers available to Government to issue directives to these enterprises being seldom used; that a needlessly large number of reports of varying periodicity have to be submitted by these enterprises to the Ministries, while the prescribed quarterly performance review reports are often not called by the Ministries; that the Government nominees on the Boards of Directors of these enterprises, although a minority, exercise a virtual veto in Board deliberations; that the same official of the Ministry is frequently nominated to the Boards of numerous enterprises; that Chief Executives of these enterprises are often summarily sacked at the pleasure of the Ministers; and so on. The "PCPU" has also made certain recommendations to put a stop to these practices. But, as noted in its Report mentioned above, they persist.

31. Two suggestions mainly advanced, are: (i) the creation of Holding companies which will interact directly with the Government but whose subsidiary companies -- legal entities themselves -- will not be directly interfered with by the Government. The idea is to distance the public enterprises from the direct reach of the Ministries and formalizing their relations with the Government; and (ii) formulation of a Memorandum of understanding between a public sector enterprise and the Ministry concerned, to the terms of which both will stand committed. The Memorandum is to spell out in specific terms what goals and targets the public sector will fulfill over a specified period, and on the other hand, prescribe what the Ministry will do to enable the public enterprise to achieve its goals. Besides the above, the PCPU has put forward certain other proposals. They include an assured 5 year term for Chief Executives, obligatory consultation with Public Enterprises Selection Board, and clearance from the Appointments Committee of Cabinet (ACC) before premature termination of their services; stipulation that any direction from the Ministry should be in writing and be reported in the Annual Report of the Undertaking; reducing the number of reports called for by the Ministries from these enterprises; reducing the number of Government officials nominated to the Boards of these enterprises, and so on. Yet another recommendation has been that the Public Enterprises Selection Board should be converted into a statutory independent body, and that an All India Management Service should be formed for top posts in these public enterprises. The recruitment policies and personnel matters, the interference by unconcerned persons in matters like employment, promotions and transfer of individuals, and grant of contracts, has also got to be eliminated. It is interesting to note that the "PCPU" has urged the Government to issue a White-Paper on public enterprises, and it has been promised by the Prime Minister in his last

Budget speech. It is expected that the White-Paper will contain several concrete suggestions and measures for improving the performance of public enterprises.

32. I do not think that anything more need be said on this occasion, more particularly because the decision herein has to be arrived at on the basis of the terms and conditions of the agreement between the parties.

33. VII. A few minor aspects :

Although in some writ petitions it was alleged that a power-cut was imposed during particular periods", no material has been placed before us in support thereof. There is a clear distinction between a power cut --which has to be notified by the State Government u/s 22B of the Indian Electricity Act, 1910 -- and the interruptions and break downs which occur now and then on account of operational or other reasons. In such a situation, it is not necessary for me to consider the question relating to liability to pay minimum charges during the period of power cut. This aspect has indeed been dealt with by me in W. P. No. 6026 of 1980 and batch, dated 12-9-1986. The same aspect has been dealt with by a learned single Judge of Bombay High Court in Mukand Iron and Steel Works Ltd. Vs. Maharashtra State Electricity Board and Another, . So far as interruptions and breakdowns are concerned, counsel for the Electricity Board has already stated that the Board is prepared to give a proportionate rebate, though in law they are not bound to do so.

34. During some months concerned herein there was a strike in the petitioner's factory. For some days, evidently, the factory was closed. But, on this account it is not possible to give any rebate or relief to the petitioner, in view of Clause 11 of the agreement, read with condition 33 of the Conditions. The said Clause and Condition say that even if the petitioner does not consume energy, or consumes energy less than the minimum guarantee, it shall pay the minimum charges. Mr. K. Srinivasa Murthy relied upon the decision of the Supreme Court in Dhanrajamal Gobindram Vs. Shamji Kalidas and Co., , in support of his contention that any cause over which the petitioner has no control will come under "force majeure". I do not think that the said principle can be applied here, in the face of Clause 11 and Condition 33. The case before the Supreme Court was one where the question related to the meaning of the word "force majeure". No such expression is used in the agreement before us.

35. For the High Tension consumers, like the petitioner, the electricity charges are arrived at on a twin basis. For ordinary consumers, like domestic consumers, the charges are based on the actual energy consumed; but, in the case of High Tension consumers the method of billing is prescribed in the revised tariffs notified in B. P. Ms. No. 1014 (Commercial), dated 13th December, 1983, published in the A. P. Gazette, Part-II, Extraordinary, dated 14th December, 1983. The notification deals with "sale of electricity to persons other than licensees revised tariffs". High Tension consumers are categorized into two classes, i.e., Category-I and Category-II, and the method of preparing bills in

their cases is also prescribed therein. Suffice it to say that the total bill represents the demand charges arrived at on the basis of each KVA in the contracted demand plus energy charges, both being arrived at the prescribed rate. However, the billing demand shall be the maximum demand recorded during the month, or 80% of the contracted demand, whichever is higher. Similarly, energy charges will be billed on the basis of actual consumption, or 50 units per KVA of billing demand, whichever is higher. Besides these charges, of course, the consumer has to pay surcharge, meter rent, and other charges, levied from time to time.

36. VIII. Conclusions: For the above reasons, the writ petitions are liable to be dismissed and are, accordingly, dismissed. There shall be no order as to costs.

37. For the very same reasons, the Writ Appeal is allowed, and the judgment and order of the learned single Judge is set aside. There shall be no order as to costs.

38. The learned counsel for the petitioner in writ petitions (and the respondent in Writ Appeal) makes an oral request for grant of leave to (sic) the Supreme Court under Article 133 of the Constitution of India. We are, however not satisfied that this case involves any substantial question of law of general importance, which, in our opinion, needs to be considered by the Supreme Court. The oral request is, therefore, rejected.

39. The learned counsel also makes a request for suspending our order pending for a period of three months, to enable him to approach the Supreme Court. To a question put by us, the counsel replied that, as a result of our judgment, the petitioner company would now be liable to pay about one crore of rupees to the Electricity Board. He submitted that he has furnished the bank guarantee for the entire amount. We are, however, of the opinion having regard to the facts and circumstances of the case, stay of recovery of the said amount cannot be on the same conditions as it was granted at the stage of admission of writ petitions.

40. We, therefore, stay the recovery of the amounts in pursuance to our judgment for a period of three months, subject to the condition that the petitioner deposits with the Electricity Board, a sum of Rs. 20,00,000/- (Rupees twenty lakhs only), within six weeks from today, and also continues and keeps alive the Bank guarantee for the remaining amount for the said period.