
(2011) 10 MP CK 0005
In the Madhya Pradesh High Court
Case No : W.A. No. 550 of 2009

Gwalior Distilleries Ltd., Rairu

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company
Ltd. and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 309
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 2003 — Section 173, 174, 175, 56(2)
General Clauses Act, 1897 — Section 11, 4, 6, 7, 8
Partnership Act, 1932 — Section 69, 74(2)

Citation : (2011) 5 MPHT 336 : (2012) 1 MPLJ 69

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dubey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

The appellant has filed this writ appeal against the order dated 16-7-2009, passed by the learned Single Judge in W.P.No. 1382/2009.

The appellant is a company incorporated and registered under the Companies Act, 1956. The appellant has been in business of manufacturing rectified spirit, extra Neutral Alcohol and also bottles Indian made foreign liquor. It entered into an agreement with the respondent-Electricity Board on 18th November, 1991 in regard to supply of electricity. Earlier agreement was of 4-10-1985. One of the condition of supply of electricity energy was that the appellant had to make guarantee of minimum consumption that would yield an annual revenue of Rs. 34747/-. The relevant clause 21 of the contract is as under:--

21. (a) The Consumer shall from the date of utilisation of electrical energy, or from the date of expiry of the three month's notice mentioned in clause 2 hereof guarantee such minimum consumption as when calculated at the tariff (excluding

charges due to fuel adjustment clause, meter rent and miscellaneous charges) will yield an annual revenue of Rs. 34747=00 (Rs. Thirty Four Thousand Seven Hundred Forty Seven only) to pay this sum as a minimum. The deficit, if any, between the guaranteed minimum charges and the actual charges shall be payable by the Consumer.

(b) The minimum guarantee specified in clause 21 (a) above shall at all times be without prejudice to realisation by the Board of the minimum prescribed under the tariff referred to in clause 9 hereof.

The appellant had been using in the process of manufacturing of spirit in effluent treatment plant cum Bio-Methanization Plant by chemical process and in that process, biogas was generated. It is a non-conventional source of energy. The State Government directed the company to use spent wash for the purpose of generating electricity by using turbine generation method. Consequently, the appellant-company applied to the respondents in regard to grant of permission to install turbine generation set of 807 KVA for captive use. The respondent granted the aforesaid permission vide letter dated 30-5-1996. A condition was imposed in the permission that the appellant had to consume minimum monthly units on consumption basis. The relevant condition is as under :--

5. You shall be required to guarantee monthly minimum units consumption based on following load factor on the contract demand in force -

a) When there is no powercut-35% load factor.

b) When there is powercut-39% load factor.

The aforesaid permission was granted to the appellant in pursuance to an electricity policy for industrialization adopted by the Government under which companies were permitted to use power generation plant for their captive consumptions of electricity.

A show cause notice was issued to the appellant on 14-7-2000 as to why a supplementary demand of Rs.77.5 lakhs be not issued against the company because the company failed to consume monthly minimum guarantee units electricity in accordance with the terms and conditions of sanction. The permission to run T.G. Set was cancelled vide order dated 28-3-2000. The appellant challenged the aforesaid order before the High Court in Writ Petition No. 677/2000. The High Court granted interim order on 14-2-2001 in favour of the appellant. A contempt petition was also filed by the appellant which was registered as C.P.No. 32/2001. Subsequently, the policy of the State Government was changed and the writ petition was dismissed as withdrawn vide order dated 21-2-2006 with the following observations :--

21-2-2006

Shri S. K. Jain, Adv. for petitioner.

Shri K. B. Chaturvedi, counsel for respondent No. 1

Shri Vivek Jain, counsel for respondents No. 2 to 4.

Shri V. K. Bharadwaj, counsel for respondent No. 6

Shri S. K. Jain, submits that he may be permitted to withdraw this petition with liberty to represent the matter before the respondents, if he has any further grievance is left. Petitioner is permitted to withdraw this petition.

It is made clear that in case further grievance after such representation he has liberty to assail the same in accordance with law.

Petition is dismissed as withdrawn with the aforesaid liberty to the petitioner.

The contempt petition was also disposed of. Thereafter a show cause notice on 7-1-2009 was issued to the appellant directing the appellant to show cause as to why the additional demand be not raised against the appellant of Rs. 77.50 lakhs in regard to liability incurred by the appellant for not utilising minimum consumption as per the permission dated 30-5-1996 for the period June, 1996 to May, 2000. The appellant challenged the aforesaid notice in a writ petition on the ground that the demand raised against the appellant in regard to minimum consumption is arbitrary and illegal and no demand can be raised in this regard in view of the Full Bench judgment of this Court reported in *Raymond Ltd. and Another Vs. State of Madhya Pradesh and Others*, The appellant further raised a point that the demand cannot be raised on the ground of limitation as provided u/s 56(2) of Electricity Act, 2003. The learned Single Judge dismissed the petition on the ground that it was a condition precedent when the permission was granted to the appellant to establish T.G. Set captive power generation to consume at least minimum 35% of load factor when there was no power-cut and 39% load factor when there was power-cut and because the appellant failed to consume the minimum electricity, hence, the notice issued to the appellant is in accordance with the law.

Learned Senior Counsel appearing on behalf of the appellant has contended that the respondent-Board has no power and authority to raise additional demand because it has failed to establish the fact that it had supplied the electricity to the appellant, so the appellant could use the minimum in terms of the Full Bench decision of this Court in the case of *Raymond Limited and another (supra)* and affirmed by the Hon"ble Supreme Court reported in (2001) 1 SCC 534.

Learned Senior Counsel further submitted that on the ground of limitation also no such demand can be raised against the appellant.

Contrary to this, learned counsel appearing on behalf of the respondent-Electricity Board has contended that the notice issued by the Board is in accordance with law because as per the agreement the appellant failed to use minimum consumption which was a condition precedent when the appellant was granted permission to install T. G. Set for its captive power consumption. Learned counsel further submitted that the liability incurred by the appellant was prior to the Electricity Act, 2003 and at that time there was no limitation

prescribed for raising any recovery, hence, the amount can be recovered from the appellant subsequently also. In support of his contentions, learned counsel relied on the following judgments :--

i) M/s. Swastic Industries Vs. Maharashtra State Electricity Board, (ii) Gendlal Agrawal Vs. State of M.P. and Others, . (iii) Pradeep Singh Narwariya Vs. M.P. State Electricity Board and Another, (vi) Kusumam Hotels (P) Ltd. Vs. Kerala State Electricity Board and Others,

The admitted facts of the case are that the appellant was granted permission to install and running of 807 KVA Biogas T. G. Set with a condition that the appellant has to consume minimum units of particular load factor. The relevant provision has been quoted above in the order and the Electricity Board calculated the liability of the appellant of minimum consumption for the relevant period on the basis of the total units on the basis of 35% & 39% load factor and difference of amount which is to be realised. The relevant chart along with show cause notice is as under :--

OFFICE OF THE SENIOR ACCOUNTS OFFICER : MPEB, GWALIOR (MP)

Billing details of monthly minimum guarantee on the basis of 35% and 39% load factor of M/s Gwalior Distillery Rairu, Gwalior. As per S. E. (O&M) Gwalior letter No.SE/(O&M)/NT-Com./1977 dtd. 23-6-2000, Code No. 595051.

CD. 1170 KVA

Sl. No.

Month

In KVA

KWH units

Units on the basis of 35% & 39% load factor

Difference to be billed

Amount

1

2

3

4

5

6

7

8

1.

6/96

540

175440

265356

35%

89916

225689.16

2.

7/96

540

78984

265356

35%

124632

467793.72

3.

8/96

708

140724

265356

35%

Not legible

Not legible

4.

9/96

534

179938

265356

35%

Not legible

Not legible

5.

10/96

534

134976

265356

35%

Not legible

Not legible

6.

11/96

504

106704

265356

35%

Not legible

Not legible

7.

12/96

576

104332

177409

39%

Not legible

Not legible

8.

1/97

564

130176

177409

39%

47233

Not legible

9.

2/97

552

122136

177409

39%

55273

Not legible

10.

3/97

624

144672

177409

39%

32757

Not legible

2467806.90

11.

4/97

600

152088

265356

39%

25321

63329.81

12.

5/97

660

177432

265356

39%

-

-

13.

6/97

792

243120

265356

39%

-

-

14.

7/97

744

249556

265356

35%

15800

39658.00

15.

8/97

768

339192

265356

35%

-

-

16.

9/97

792

264000

265356

35%

1356

3403.56

17.

10/97

672

212712

265356

35%

52644

132136.44

18.

11/97

972

182256

265356

35%

83100

208581.00

19.

12/97

1008

139344

265356

35%

126012

316290.12

20.

1/98

708

209688

265356

35%

55668

139726.68

21.

2/98

816

117432

265356

35%

147924

371289.24

22.

3/98

-

164376

265356

35%

100980

253459.80

1527874.65

23.

4/98

600

168624

265356

39%

96732

242797.32

24.

5/98

648

167280

265356

39%

98076

246170.76

25.

6/98

780

219144

265356

39%

46212

115992.12

26.

7/98

876

221424

265356

39%

43932

110869.32

27.

8/98

876

251448

265356

39%

13908

34909.08

28.

9/98

768

234204

265356

39%

31152

78194.52

29.

10/98

864

267680

265356

39%

-

-

30.

11/98

800

177920

265356

35%
87436
219464.26
31.
12/98
872
135900
265356
35%
129456
324934.26
32.
1/99
1048
265720
265356
35%
-
-
33.
2/99
968
192260
265356
35%
73098
Not legible
34.
3/99
936

193460

265356

35%

71896

Not legible

Rs.

17,36,658.96

35.

4/99

752

199140

265356

35%

Not legible

Not legible

36.

5/99

976

253540

265356

39%

Not legible

Not legible

37.

6/99

992

224940

265356

39%

40416

Not legible

38.

7/99

992

316960

265356

39%

-

-

39.

8/99

1032

807240

265356

39%

-

-

40.

9/99

680

241460

265356

39%

23956

67316.36

41.

10/99

768

245220

265356

39%
20136
56582.16
42.
11/99
912
201080
265356
39%
64276
180615.56
43.
12/99
952
219260
265356
35%
46096
129529.76
44.
l/2k
824
155660
265356
35%
109696
308245.76
45.
2/2k
768

232940

265356

35%

32416

91088.96

46

3/2k

904

221928

265356

35%

4343

122032.68

47.

4/2k

928

254720

265356

35%

10636

29887.16

48.

5/2k

976

265760

265356

35%

-

-

1318137.28

Summary Total:--

June 96 to March 97

: Rs. 24,67,806.90

April 97 to March 98

: Rs. 15,27,874.65

April 98 to March 99

: Rs. 17,36,658.96

April 99 to May 2k

:Rs. 13,18,137.28

Rs. 70,50,477.79

Say Rs.

: Rs. 70,50,478.00

Regional Accounts Officer. M. P. Electricity Board Gwalior.

The appellant has clearly stated in the writ petition and the writ appeal that there were power-cuts by the Board in the relevant period and the Board did not supply the total electricity. Even the Board had requested the appellant to sell the electricity to the Board generated by the appellant through captive generation. The Full Bench of this Court Raymond Limited and another (supra) has held as under in regard to calculating the minimum guarantee unit :--

22. In fact, it would be travesty of justice to construe that irrespective of the fact whether the Board is unable to supply the minimum energy which covers the minimum charges, even then the consumer is under obligation to pay the minimum guaranteed charges. It was contended that since the consumer has entered into an agreement with all eyes open, he is bound by the terms of contract and it is not open for him to plead that if the Board is unable to supply the power, there should be a proportionate reduction in the minimum charges. The Courts have to do justice between the parties and they cannot close eyes to the realities that the power condition in the country is staggering. Therefore, Courts have to interpret the Clauses of the Agreement which advances the cause of justice. Clauses 11 and 23(b) of the Agreement provide for reduced charges in the event of inability of the Board to supply power. Not only this, in the event of consumer being unable to consume the power, he can also give a notice under Clause 23(a) of the Agreement and can seek reduction in the supply and the Board can charge the reduced supply at such rate as per Board's tariff for the area for the time being in force. As such, it is not that there is one way traffic. There is in fact two way traffic. Whenever the Board fails to supply energy, then proportionate rebate has been given in Clause 23(b) and when the consumer is

unable to consume the contract demand, he has also been charged on the reduced supply at such rate under Board's tariff for the area for the time being in force the consumer shall elect to be charged. In both the situations, it is not that the realities of the life have not been taken into consideration.

In the tariff which has been issued by the Board, as quoted above, there is no such provision made for a situation that on account of inability of the Board to supply energy, there should be proportionate reduction in the minimum charges or not. After having bestowed our best of consideration, we are of the opinion that Clause 23(b) of the Agreement can be invoked in the present situation as when the Board is unable to supply even less than the 40% of the contract demand, that would be treated to be the inability of the Board to supply energy and on account of the reduced supply, the consumer would be entitled to proportionate reduction in the minimum of the contract demand. When the Board is unable to supply the contract demand, then the Board is under an obligation to give a proportionate rebate in the minimum charges also. This is no answer to the fact that since the consumer has entered into an agreement with his eyes open, therefore, he is bound by the statutory contract or that the Board has to cater to outlay and it has worked out 40% contract demand so as to keep the energy going even during the inability of the supplier or of the consumer. Where even the minimum 40% of the contract demand energy is not supplied by the Board and the Board claims charges for the same, it is nothing but travesty of justice.

Difficulty arises only when the Board is unable to supply the minimum of the 40% of the contract demand. In case the demand is more than 40%, then automatically 40% of the contract demand charge is covered. But where the Board supplies only 20% of the contract demand and charges for the minimum 40% of the contract demand, can this liberty be given to the Board in face of such inequitable and arbitrary action of the Board on the plea that the consumer has entered into a contract with his eyes open and the Board has to cover various outlays? In our humble opinion, this will be inequitable, arbitrary and unreasonable to sustain such an argument. The Courts are not here to do technical justice. The Courts are also Courts of equity. When Clauses 11 and 23 of the Agreement make a provision for two situations i.e. in the event of inability of the Board to supply energy or in the event of inability of the consumer to consume the contract demand, then in either case, charges are made on the reduced supply, then there is no justification to say that so far as 40% of the contract demand is concerned, the Board is under no obligation to supply 40% of the contract load. To accede to this interpretation of the Board will be unfair and unjust.

It may be relevant to mention here that in the case of Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another,) as well as in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, , though clauses of both the Haryana Electricity Board and Bihar State Electricity

Board were not exactly akin to the present clauses but all over the country, a model agreement provides for the proportionate rebate in the event of inability of the supplier to supply energy and that of the consumer to consume the energy. In the case of Rajasthan Electricity Board also, in the case of M/s. Man Industrial Corporation vs. R.S.E.B., AIR 1986 Raj 137 , rebate was given. Both the decisions in the case of M/s. Man Industrial Corporation (supra) and Mukand Iron and Steel Works Ltd. Vs. Maharashtra State Electricity Board and Another, were referred to by the Hon. Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills,) and after referring to the earlier decision in the case of Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, their Lordships of the Supreme Court reaffirmed the position of law that the consumer in the event of non-supply of the minimum of the contract demand will be entitled to be charged for the actual supply of energy.

After considering all aspects of the matter, we are of the opinion that the view taken by the learned Division Bench of this Court in the case of Gwalior Steels Pvt. Ltd. Vs. The Madhya Pradesh Electricity Board, does not lay down a correct law and we hold with reference to Clause 23(b) of the Agreement read with Tariff, that whenever contracted supply falls short of 40% of the contract load, then the Board shall be entitled to charge for the reduced energy (actually supplied) and will not be entitled to charge 40% of the contract load. This interpretation which appears to us to be more equitable, just and reasonable shall be applicable only prospectively that is from the date of the order and will not have any retrospective operation. This is being done keeping in view that the Division Bench judgment of this Court has held the field since 1993 and the Board has been billing the consumers in the State on that basis and now since we are taking a different view from that of the Division Bench of this Court and we are interpreting the provision contrary to the view taken by the Division Bench in the above case of M/s. Gwalior Steel Private Limited it would be more just and equitable to give this interpretation a prospective effect and not retrospective. Similar course of action was adopted by the Hon. Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . Therefore, we hold that the present interpretation will be prospective in nature and not retrospective.

The Hon"ble Supreme Court in the case of Raymond Limited and another vs. State of M. P. & ors., reported in (2001) 1 SCC 534, on an appeal against the Full Bench decision of this Court has held as under :--

19. The High Court was of the view that it would be more just, equitable and reasonable to hold whenever the contracted supply fell short of 40% of the contract load which alone accounts for the minimum guaranteed sum, then the Board shall be entitled to charge for the reduced energy actually supplied and not the minimum of 40% of the contract demand. As noticed supra, on behalf of the consumers, not only inspiration is drawn to support their claim in this regard

but an extreme stand is also sought to be taken by contending that in such cases as also in cases where the supply is not of the contracted load and the extent of the agreed load factor without interruptions so as to cause any disturbance or dislocation of the smooth functioning of their industry concerned, the obligation under the clause in the agreement providing for the payment of the minimum guaranteed charges to the tune of 40% of the contract load also would automatically stand snapped and not only that the consumers will be relieved of their liability but they can be made answerable only to the extent of energy actually supplied and which has been consumed. There is no justification for countenancing this extreme stand either under any of the provisions of the Act or the regulations made thereunder or under the provisions of the contract entered into between the parties and tariff schedule notified and made binding upon the consumers. This would, if accepted, give credence to the plea vaguely and indirectly projected as though the contract demand is the minimum supply undertaken to be made by the Board, whereas in contrast clause 23 of the general conditions for supply of electrical energy by the Board applicable to all consumers in unmistakable terms stipulate that the maximum demand agreed to be supplied and taken under the agreement shall be the consumers contract demand and that if as a matter of fact in any given case the consumption exceeds this level, then only the contract provides for additional charges to be paid by the consumers.

As a matter of general principle, any stipulation for payment of minimum guarantee charges is unexceptional, in a contract of this nature wherein, the Board which undertakes generation, transmission and supply of electrical energy has to, in order to fulfil its obligation lay down lines and install the required equipment and gadgets and constantly keep them in a state of good repair and condition to render it possible for the consumer to draw the supply required at any and all times. These commitments are irrespective of the capacity of the Board to generate at a given point of time or during a relevant period the total quantum required for the consumption of all consumers of various categories or even during the days of breakdown envisaged or staggering necessitated on account of orders of Government regulating the distribution and consumption of energy as well as during periods when for reasons personal or peculiar to the consumers or even beyond their control the consumption is not and could not be of the mutually agreed extent. The Board undertakes to generate and supply energy, in public interest also at concessional rates of varying nature and it cannot be stated that the rates so fixed invariably are to meet the expenditure incurred by the Board for generation and supply of energy, to the last pie. Consequently, if either in the general conditions and terms of supply or the contract or the tariff rates as the case may then be any stipulation, in clear and unmistakable terms that the liability relating to the payment of guaranteed minimum charge could or will be enforced irrespective of the actual consumption rate of the consumer or even de hors the capacity or otherwise of the Board to supply even the minimum of the contract demanded energy, there could be no

valid objection in law for any such stipulation being made and the consumer will be bound to honour such commitment. The contract for the supply of electrical energy cannot be treated on par with any other contracts of mutual rights and obligations, having regard to the peculiar problem involved in the generation, transmission and supply which invariably depend upon the vagaries of monsoon as well short supply to them of the required coal and oil in time and similar other problems over which the Board cannot have any absolute control. The recurring commitments relating to constant and periodical maintenance of supply lines and other installations cannot be anytheless even during such times and such onerous liabilities cannot be left to fall exclusively upon the Board and it is only keeping in view all these aspects, payment of minimum guaranteed charges is necessary in-built in the tariff system of the Board and the reasonableness or legality of the same cannot be considered either in the abstract or in isolation of all these aspects. It is for this reason that all over and the consumer is also made to share the constraints on Board's economy even during such periods. In fact the tariff inclusive of such a provision for payment of a minimum guaranteed sum irrespective of the supply/consumption factor appears to be the consideration for the commitments undertaken by the Board as a package deal and it is not possible or permissible to allow the consumer to wriggle out of such commitments merely on the ground that the Board is not able to supply at any point of time or period, the required or agreed quantum of supply or even supply up to the level of the minimum guaranteed rate of charges. Tinkering with portions of contracts for any such reasons, merely on considerations of equity or reasonableness pleaded for and vis-a-vis one party alone will amount to mutilation of the whole scheme underlying the contract and render thereby the very generation and supply of electrical energy economically unviable for the Board. Consumers, who enter into such commitments openly and knowing fully well as these hazards involved in the generation transmission and supply, will be estopped from going behind the solemn commitment and undertaking on their/ its part under the contract. The High Court does not seem to have properly appreciated the ratio of the several decisions noticed except merely referring to them in extenso, and yet ultimately just arrived at a conclusion merely for the reason that the Court considered it to be "more equitable, just and reasonable" to do so.

So far as the cases under consideration and the liability of the consumers relating to minimum guarantee are concerned, the relevant clause relating to minimum guarantee charges as well as the tariff notification relied upon, would go to show that what was guaranteed was not the payment of a flat sum amount of money to be calculated with reference to a particular number or percentage of units, de hors the quantum of electrical energy distributed and supplied by the Board. In other words, the guarantee was of "....such minimum consumption as when calculated at the tariff....." will yield a particular monthly/annual sum to the Board. Even going by the tariff notification which prescribes also a minimum entitling the Board to collect it (vide clause 21(b)) it merely casts liability on the

consumer to "guarantee a minimum monthly consumption equivalent to 40% load factor of the contract demand". Consequently, for the consumer to honour his/its commitment so undertaken to give a minimum consumption there should essentially be corresponding supply by the Board at least to that extent, without which the consumption of the agreed minimum is rendered impossible by the very lapse of the Board. The minimum guarantee, thus, appears to be not in terms of any fixed or stipulated amount but in terms of merely the energy to be consumed. The right, therefore, of the Board to demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electrical energy at least to that extent, and not otherwise. It is for this and only reason we find that the ultimate conclusion arrived at by the Full Bench of the High Court does not call for any interference in these appeals.

From the judgment of the Hon'ble Supreme Court it is clear that the Board can demand minimum guarantee charges subject to its corresponding duty that it had to supply electrical energy at least to that extent and not otherwise. In the show cause notice the Board did not mention the fact that it had supplied the electricity energy to the appellant or what amount of electricity energy was supplied to the appellant during the period when the appellant failed to utilize the minimum guarantee supply.

In regard to question of limitation, initially a demand was raised by the respondent Board vide notice dated 14-7-2000 but no action had been taken. Thereafter the appellant filed a writ petition and the appellant was permitted to withdraw the writ petition vide order dated 21-2-2006 with a liberty and ultimately the demand was raised again vide notice dated 7-10-2009. When the initial notice was issued to the appellant, the Electricity (Supply) Act, 1948 was in force. The minimum guarantee clause in sanction letter was inserted in accordance with the section 49 of the Act. In the aforesaid Act there was no provision of limitation in regard to recovery of dues. However, subsequently, the Electricity Act, 2003 came into force w.e.f. 10-6-2003. Section 56(2) of the Act prescribes that no sum due from any consumer under this section shall be recoverable after a period of two years. The relevant section is as under :--

56. Disconnection of supply in default of payment

(1) X X X X X X X

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Section 174 of the aforesaid Act prescribes overriding effect, which is as under :--

"174. Act to have overriding effect.-- Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Section 175 of the aforesaid Act prescribes provisions of this Act to be in addition to and not in derogation of other laws, which is as under :--

"175. Provisions of this Act to be in addition to and not in derogation of other laws.-- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

From section 174 of the Electricity Act 2003, it is clear that Act to have overriding effect. However, the aforesaid Act has not been made effective with retrospective effect hence, the liability of the appellant which accrued under the provisions of the Electricity (Supply) Act, 1948 continued into force but the question is as to whether that liability can be enforced after coming into the effect of Act, 2003 w.e.f. 10-6-2003 after a period of two years. Admittedly, after 10-6-2003, if a period of two years be calculated then the respondent can enforce the liability upto 10-6-2005 and even though, when the petition was dismissed as withdrawn vide order dated 21-2-2006, then the respondent can enforce the liability after a period of two years i.e. in the year 2008 but the respondents in this case issued notice Annexure-P/1, dated 7-1-2009, admittedly beyond a period of two years. Law of limitation is a procedural law. It is an admitted fact that the Electricity Act, 2003 has not been made effective with retrospectively. It means that the liability accrued to the appellant to continue to be in force after enforcement of the Act, 2003 but the aforesaid liability could not be enforced beyond the period of two years as prescribed by section 56(2) of the Electricity Act, 2003 because section 174 of the Act of 2003 has overriding effect. Even otherwise there would be inconsistency of two laws. The Supply of Electricity Act, 1948 and the Electricity Act, 2003 in regard to enforcement of the liability.

The Hon''ble Supreme in the case of Keshavan Madhava Menon vs. The State of Bombay, AIR (38) 1951 SC 128 has held as under in regard to retrospective operation of an interpretation of a statute :--

Every Statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. This rule of interpretation should be applied for the purpose of interpreting our Constitution.

The Hon''ble Supreme Court further in the case of State of Punjab vs. Mohar Singh Pratap Singh, AIR 1955 SC 84, has held as under in regard to effect of repeal of an Act and section 6 of General Clauses Act :--

8. The High Court, in support of the view that it took, placed great reliance upon certain observations of Sulaiman, C. J. in, (Firm) Danmal Parshotam Dass Vs. (Firm) Babu Ram-Chhote Lal,). The question raised in that case was whether a

suit by an unregistered firm against a third party, after coming into force of section 69 of the Partnership Act, would be barred by that section in spite of the saving clause contained in section 74(b) of the Act. The Chief Justice felt some doubts on the point and was inclined to hold that section 74(b) would operate to save the suit although the right sought to be enforced by it had accrued prior to the commencement of the Act: but eventually he agreed with his colleague and held that section 69 would bar the suit.

While discussing the provision of section 74(2) of the Partnership Act, in course of his judgment, the learned Chief Justice referred by way of analogy to section 6 (e) of the General Clauses Act and observed as follows (at p.7):

It seems that section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, section 6(e) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself.

These observations could not undoubtedly rank higher than mere "obiter dictum" for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman, C. J., the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, section 6 of the General Clauses Act will undoubtedly be attracted.

But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment; the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is report of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new

legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

The offence committed by the respondent consisted in filing a false claim. The claim was filed in accordance with the provision of section 4 of the Ordinance and u/s 7 of the Ordinance, any false information in regard to a claim was a punishable offence. The High Court is certainly right in holding that section 11 of the Act does not make the claim filed under the Ordinance a claim under the Act so as to attract the operation of section 7. Section 11 of the Act is in the following terms :

The East Punjab Refugees (Registration of Land Claims) Ordinance No. VII of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had come into force on 3rd day of March, 1948.

We agree with the High Court that the expression "anything done" occurring in the section does not mean or include an act done by a person in contravention of the provisions of the Ordinance. What the section contemplates and keeps alive are rules, notifications or other official acts done in exercise of the powers conferred by or under the Ordinance and these powers are mentioned in severed sections of the Act. But although the lodging of the claim does not come within the purview of section 11 of the Act, we are of opinion that the proviso to section 4 of the Act clearly shows that a claim filed under the Ordinance would be treated as one filed under the Act with all the consequences attached thereto.

Section 4 of the Act provides for the registration of land claims. The first sub-section lays down how the claim is to be filed. The proviso attached to it then says that "a refugee who has previously submitted a claim under Ordinance VII of 1948 to any other authority competent to register such claim shall not submit another claim in respect of the same land to the Registering Officer". Such claim would be reckoned and registered as a claim under the Act and once it is so treated the incidents and corollaries attached to the filing of a claim, as laid down in the Act, must necessarily follow. The truth or falsity of the claim has to be investigated in the usual way and if it is found that the information given by the claimant is false, he can certainly be punished in the manner laid down in sections 7 and 8 of the Act.

If we are to hold that the penal provisions contained in the Act cannot be attracted in case of a claim filed under the Ordinance, the results will be anomalous and even if on the strength of a false claim a refugee has succeeded in getting an allotment in his favour, such allotment could not be cancelled u/s 8

of the Act. We think that the provisions of sections 4, 7 and 8 make it apparent that it was not the intention of the legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of section 6 of the General Clauses Act.

It may be pointed out that section 11 of the Act is somewhat clumsily worded and it does not make use of expressions which are generally used in saving clauses appended to repealing statutes; but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the Ordinance and in our opinion this question has to be answered in the negative.

The Hon"ble Supreme Court further in the case of State of Rajasthan Vs. Mangilal Pindwal, , has held as under :--

8. The learned Judges of the High Court have held that as a result of the substitution of sub-rule (2) of Rule 244 by notification dated September 2, 1975 and November 26, 1975, provisions of sub-rule (2) of Rule 244, as applicable during the period from August 19, 1972 till September 1, 1975, stood substituted and, as a result, the said provisions ceased to exist and must be treated to have been obliterated and, therefore, Rule 244 (2), as it stood on August 19, 1972, was no longer available for supersession, amendment or substitution on March 11, 1976, since the same stood amended and substituted by new provisions contained in notification dated September 2, 1975 and November 26, 1975. The High Court has placed reliance on the following passages from Craies on Statute Law and Sutherland on Statutory Construction:

When an Act of Parliament is repealed", said Lord Tenterden in *Surtees vs. Ellison*," it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule". Tindal C. J. stated the exception more widely. He said: "The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

[Craies on Statute Law, 7th Edn., pp. 411-412]

Since an amendatory Act alters, modifies, or adds to a prior statute, all Courts hold that a repealed Act cannot be amended, that is, no Court will give effect to a repealed law because the legislature attempted to amend it.

[Suther land on Statutory Construction, Vol. I, para 1903, pp. 328-329]

As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [See : *Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co.,*]. In other words, the substitution of a provision

results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction:

The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed Act in future and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed.

Similarly in Crawford's Interpretation of Laws it has been said : "Effect of Repeal, Generally. In the first place, an outright repeal will destroy the effectiveness of the repealed Act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters", [pp. 640-641]

The observations of Lord Tenterden and Tindal C.J. referred in the abovementioned passages in Craies on Statute Law also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the law laid down by this Court. [See: Qudrat Ullah Vs. Municipal Board, Bareilly,

This means that as a result of repeal of a statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. The effect of the amendments that were introduced in sub-rule (2) of Rule 244 of the Rules vide notifications dated September 2, 1975 and November 26, 1975 whereby the said-rule was substituted with effect from September 2, 1975 is that sub-rule (2) which was introduced on August 19, 1972 ceased to exist with effect from September 2, 1975 but it was operative during the period from August 19, 1972 to September 1, 1975. It is settled law that a rule made in exercise of the power conferred by Article 309 of the Constitution can have retroactive operation. Since sub-rule (2) of Rule 244 of the Rules, as introduced in August, 1972, was operative during the period from August 19, 1972 to September 1, 1975, it could be amended in exercise of the rule-making power under Article 309 of the Constitution so as to operate during the period from August 19, 1972 to September 1, 1975. The notification dated March 11, 1976, by substituting sub-rule (2) of Rule 244 of the Rules, repealed the said provision that was operative during the period from August 19, 1972 to September 1, 1975 and replaced it by another provision which was to be operative during the said period. The said notification cannot be held to be invalid on the basis that the said amendment sought to amend a provision which was not in existence. The Statement of Law in Sutherland on Statutory Construction, on which reliance was placed by the learned Judges of the High Court, that a repealed law cannot be amended has no application in the present case.

On the basis of aforesaid principle of law laid down by the Hon''ble Supreme Court, in our opinion, the respondents-Electricity Board cannot enforce the liability after a period of two years from the date of dismissal of the writ petition.

The arguments advanced by the learned counsel for the respondents that the liability was under the old Act i.e. the Electricity (Supply) Act, 1948, hence, the provision of section 56(2) of the Electricity Act, 2003 would not be applicable, could not be accepted. Learned counsel relied on a decision of the Division Bench of this Court and Single Bench of this Court i.e. Gendlal Agrawal Vs. State of M.P. and Others, and 2010(3) MPLJ 259 : 2010 (3) MPHT 454 (DB). In the aforesaid judgments the liability was enforced within a period of two years from the date of coming into the force of the Act of 2003, hence, the judgments are distinguishable but in the present case, admittedly, no notice was issued by the respondents within a period of two years as required u/s 56(2) of the Act of 2003 even after coming into force of the Act of 2003 or final disposal of the writ petition 677/2000 of this Court.

Consequently, the writ appeal filed by the appellant is hereby allowed. The impugned order passed by the learned Single Judge is hereby quashed. The Writ Petition filed by the appellant is hereby allowed and the show cause notice dated 7-1-2009, Annexure-P/1 is hereby quashed.

There shall be no order as to costs.