

(1996) 10 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12256 of 1988

J. Raghu Rice Mills

APPELLANT

Vs

The Chief Engineer (Electricity), APSEB, and Others

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (1996) 2 ALD(Cri) 825 : (1997) 1 ALT 190

Hon'ble Judges : S. Parvatha Rao, J; B.V. Ranga Raju, J

Bench : Division Bench

Advocate : P. Anil Kumar Reddy, for the Appellant; K.N. Jwala, SC, for the Respondent

Final Decision : Allowed

Judgement

S. Parvatha Rao, J.—The petitioner questions the order of the 3rd respondent herein i.e., Superintending Engineer, Assessments, at Hyderabad dated 15-10-1987 and the order of the 1st respondent herein i.e., Chief Engineer (Electricity), Andhra Pradesh State Electricity Board, Western Zone at Hyderabad in Appeal No. 16 of 1987, Rural Circle, Hyderabad dated 28-6-1988 confirming the order of the 3rd respondent, and seeks a Writ of Certiorari calling for the records relating to the said orders and quashing the same.

2. First the facts in brief. The petitioner is a proprietary concern of one J. Chandramouli (hereafter referred to as the petitioner) who gave the affidavit in support of the present Writ Petition. He set up a rice mill at Kalwakurthy in Mahaboobnagar District and is running the same under the name and style of the proprietary concern. The said rice mill has been receiving energy from the Andhra Pradesh State Electricity Board under Service Connection No. 670 (LT Category III). The original contracted load was 30 H.P. He decided to convert the said mill into a modern rice mill which required additional load of electrical energy and by application dated 26-4-1984 he applied to the Divisional Engineer, Operation, Mahaboobnagar for increase of load from 30 HP to 70 HP. By letter

dated 18-5-1985, the Divisional Engineer sanctioned extension of supply of energy by 40 HP additional load to the existing 30 HP (making total of 70 HP) subject to the petitioner paying Rs. 29,600/- as voluntary loan contribution towards estimated cost of the extension and also a sum of Rs. 9,910/- as subsidy. He states that subsequently he was orally allowed to purchase and supply to the authorities concerned a distribution transformer and, after deducting its cost, to pay the balance sum of Rs. 15,775/- towards voluntary loan contribution. He also states that a new meter capable of taking the additional load upto 70 HP was also installed and that the distribution transformer supplied by him was installed by the authorities concerned.

3. On 15-11-1985, the Assistant Divisional Engineer, Operation, Hyderabad visited the petitioner's rice mill premises and issued initial assessment notice dated 16-11-1985 stating that it was noticed that the petitioner exceeded the sanctioned contract load of 30 HP by drawing energy at 70 HP and that therefore was guilty of malpractice, and that the Superintending Engineer would enquire into the matter and would assess and fix the amount of loss sustained by the Board. He further stated that he provisionally estimated the value of energy misused at Rs. 36,805/- and directed the supply of energy to the petitioner to be disconnected. The 2nd respondent clarified that supply of energy would be restored on the petitioner paying 50% of the provisional assessment amount plus Rs. 100/- towards supervision charges, and directed the unauthorised load to be regularised. Thereafter, the petitioner paid a sum of Rs. 18,522.50 ps. (i.e., half of the provisional assessment, Rs. 18,402.50 ps. + Rs. 100/- supervision charges + Rs. 20/- re-connection charges) by demand draft dated 21-11-1985 and got the supply of energy restored to the rice mill. The petitioner paid the balance voluntary loan contribution of Rs. 15,775/- by demand draft dated 21-2-1986.

4. The petitioner and the respondents are not agreed as to when exactly the petitioner purchased and handed over the distribution transformer to the authorities concerned and when it was actually installed and connected, and when he actually gave the L.T. agreement for 70 HP on stamp paper. According to the respondents, the additional load of 40 HP was released only on 1-6-1986. The petitioner disputes and states that the additional load was released even before he paid the balance voluntary loan by demand draft dated : 21-2-1986.

5. More than an year after the additional load was released according to the respondents on 1-6-1986, the 3rd respondent gave show-cause notice dated 27-6-1987 to the petitioner (received on 12-9-1987) stating that he provisionally was of the view that the petitioner misused energy/load and that the loss sustained by the Board by reason of the said malpractice of the petitioner was Rs. 38,737.45 ps. and that if the petitioner had any objection he should submit his written representation within 30 days. This was with reference to the initial assessment notice dated 16-11-1985 of the Assistant Divisional Engineer, Operation, Hyderabad, referred to earlier. The said estimation was on the basis that it could be reasonably assumed that the energy was misused from

16-11-1984 to 15-11-1985 i.e., for a period of one year prior to the date on which the inspection was made and the alleged malpractice was noticed. The petitioner gave his reply dated 1-10-1987 stating as follows:.

"Further, I have applied for 40 HP. additional Load on 26-4-84 and the estimate has been sanctioned by DEE/O/Mahabubnagar vide Sanction S. No. 70/84-85. An intimation was also given to me on 18-5-85 for payment of Rs. 29,600/- 100% VLC charges towards the cost of the estimate and Rs. 9,910/- as subsidy. With the hope of above sanctions, I have purchased the Motors for additional load of 40 HP vide Bill No. 143 and erected in the Mill for testing purpose by the suppliers on dated 10-8-1985.

In the meanwhile, the Assistant Divisional Engineer, REC/ Kalwakurthy has inspected the premises and booked me under Malpractice even though the additional load of 40 HP has not been connected electrically.

In the above circumstances, I request your honour kindly withdraw the notice issued by the ADE/ REC/Kalwakurthy and the 50% assessment charges paid already may be adjusted in the future bills of S.C. No. 670 of Kalwakurthy".

The 3rd respondent passed final order dated 15-10-1987 confirming his provisional assessment of Rs. 38,737.45 ps. as the value of the loss of energy sustained by the Board by the reason of the alleged malpractice of the petitioner on a finding that on 15-11-1985 when inspection was made the total connected load of the petitioner's unit was found to be 70 HP by the inspecting Officer though the contracted load was 30 HP and that the petitioner in the presence of inspecting Officer admitted that motors of 40 HP were erected on 10-8-1985 for testing purpose and that "the total load of 70 HP was witnessed by the owner of the mill before the inspecting officer on 15-11-1985 in the presence of the workers of the mill. The 3rd respondent also observed in his order that the petitioner had not furnished the details as to payment towards VLC, subsidy and additional security deposit and when he executed the L.T. agreement for total load of 70 HP and that the additional load of 40 HP was actually released to the petitioner on 1-6-1986 and that till 31-5-1986 the contracted load of the petitioner remained at 30 HP only.

6. The petitioner preferred appeal dated 26-11-1987 to the 1st respondent. Therein, the petitioner submitted, inter alia, as follows:

"At this stage, it was very surprising to find and receive a notice alleging that we were misusing energy by connecting an excess load of 40 HP over the sanctioned load of 30 HP even though 40 HP additional load was sanctioned to us by Divisional Electrical Engineer (Operation) Mahbubnagar and the supply released to us by the local officials for utilising the additional load after erecting the transformer given by us and installing the meter and C.T.S. for utilising additional load+existing load totaling to 70 H.P. This being so, we are not able to understand what is meant by releasing additional load, since we are not acquainted with the said procedure after having done all the above works

necessary for giving additional load and having permitted us to utilise the same."

He also stated that the transformer was erected one year before 1-6-1986, and that the L.T. agreement was also handed over immediately thereafter. He then complained as follows:

"From the above, it can be seen that these procedures of Electricity Board are so confusing, that the Board officials are harassing the consumers, who are not well aware of the same, by foiling false allegations against them and imposing heavy penalties on some pretext or other. They do not give anything in writing and all oral talk and oral instructions and keep the consumers in darkness always in spite of spending huge amounts as aforementioned, in the interest of getting our things done, though it is not covered in our scope.

A thorough probe may kindly be made into all the above affairs and withdraw the illegal notice served on us on the pretext of having resorted to malpractice of exceeding the contracted load and refund the amount of Rs. 18,522.50 paid by us, under protest, tentatively, in order to avoid disconnection of service and hampering of Milling operations, being the paddy production season".

The petitioner also expressed surprise over the statement of the 3rd respondent that the additional load was actually released on 1-6-1986 and alleged that, if that was so, there was no explanation for the delay in the so called release of supply to the petitioner's rice mill. The 1st respondent gave personal hearing to the petitioner on 28-4-1988.

7. The 1st respondent by his order dated 28-6-1988 rejected the appeal and confirmed the assessment made by the 3rd respondent. He observed that the records showed that the petitioner paid the balance VLC amount on 21-2-1986, the security deposit of Rs. 1,440/- on 20-5-1986 and entered into agreement for release of additional load on 11-5-1986, and that the said facts revealed that the petitioner completed the formality for release of the additional load only after the booking of the case under the malpractice on 15-11-1985 and that the petitioner was not entitled to connect the additional load though he got the sanction of the same (prior to the date of inspection) without fulfilling all the departmental formalities. He also observed that the previous meter was replaced with C.T. meter with higher capacity in December, 1983 itself. On that basis he found that the fact of release of additional load on 1-6-1986 was probalised. He therefore, concluded that the petitioner committed malpractice "by connecting loads in excess of sanctioned loads unauthorisedly and that therefore malpractice as per condition No. 39.1.2. of the Terms and Conditions of Supply of electrical energy by the Andhra Pradesh State Electricity Board ("Conditions" for short) was committed by the petitioner.

8. In the affidavit in support of the Writ Petition, the petitioner states:

"On enquiry from the Board Officials (after sanction of the additional load under letter dated 18-5-1985 of the Divisional Engineer), it was made known that there

is no provision for them for providing distribution transformer and suggested that we should purchase the same privately and that could be erected by the Board officials in the mill premises. In view of payment of Rs. 29,600/- the authorities directed to deposit a sum of Rs. 15,775/-, thus deducting the cost of the distribution transformer. Accordingly, I purchased distribution transformer and requested the authorities to erect the same and provide the additional 40 H.P. to the existing 30 H.P. As a consequence of the additional load the meter was also requested to be replaced by me to the concerned authorities. In fact the authorities have erected the transformer and provided the meter for 70 H.P."

The petitioner questions the impugned orders of the 1st and 3rd respondents on the ground that the petitioner had already applied for and got the sanction for the additional load of 40 H.P. on 18-5-1985 itself by the concerned Divisional Engineer, and that as the authorities concerned could not acquire the distribution transformer necessary for enabling the petitioner to draw the additional load and advised that he himself had to purchase a distribution transformer and handover the same to the concerned authorities, it could not be said that there was no sanction for the additional load or that he was drawing the additional load unauthorisedly when the inspection was made by the Assistant Divisional Engineer (Operation), Hyderabad on 15-11-1985. He also submits that he was under pressure from the civil supplies authorities to increase the capacity of his rice mill, and that was why he applied for additional load on 26-8-1984 itself, but the Divisional Engineer took his own time till 18-5-1985 for sanctioning the additional load. Even after that he was advised to acquire the distribution transformer and hand over to the authorities concerned. He contends that, under the circumstances, he cannot be accused of any malpractice. He also further alleges that attributing pilferage of electricity in November, 1985 by the 2nd respondent was "only a ruse to book a case for extraneous considerations without any basis whatsoever for sustaining the charge".

9. The Writ Petition was admitted on 11-8-1988 itself and on the same day in W.P.M.P. No. 15459 of 1988, a learned single Judge of this Court directed as follows after hearing the Counsel on both sides:

"Prima facie the inspection was made when the pilferage was discovered on 16-11-85. The validity of the demand on the basis of the alleged pilferage with retrospective of one year prima facie is not correct when the permission to install the additional load itself was given on 18-5-85. As half of the demand was already paid by the petitioner, there shall be an interim stay without any further conditions".

10. The Assistant Divisional Engineer (O.P.), A.P.S.E.B. filed his affidavit on behalf of the respondents on 4-7-1996 after the Writ Petition came up for final hearing. The short ground taken for sustaining the impugned orders of ?, the 1st respondent is that the petitioner was "not entitled to connect the additional load unless all the requirements stipulated in the sanctioned letter dated 18-5-1985 of the D.E. (Operation), Mahaboobnagar are complied with", and that as both the

authorities on facts held that the petitioner paid the V.L.C. amount on 21-2-1986, consumption deposit (security deposit) on 20-5-1986 and concluded the agreement for release of additional load on 11-5-1986 i.e., much after the date of inspection, the petitioner was found on 11-5-1986 to have connected the additional load without fulfilling any of the requirements envisaged in the sanction letter, and, therefore the action of the petitioner constituted malpractice under condition 39.1.2 read with condition 16 of the Conditions. He also stated that no meter was replaced after erection of transformer for release of additional load, and that the then existing meter itself was there from December, 1983 and it was retained because it was having sufficient capacity to take additional load. He also took an objection that the original authority i.e., Superintending Engineer (Assessments), Hyderabad was not made a party to the Writ Petition. He also gave an additional counter affidavit dated 25-8-1996; therein he explained why the petitioner was asked to procure the transformer as follows:

"In order to avoid delay for procuring transformers, the petitioner was permitted to obtain transformer at his cost and permitted to deduct the cost of the same from the sum of Rs. 29,600/- payable towards 100% V.L.C. Accordingly petitioner had deducted a sum of Rs. 13,825/- the cost of the transformer of 100 KVA and paid the balance of the amount of Rs. 15,775/- as V.L.C. on 21-2-1986. The said transformer was erected and energised only on 30-5-1986. Hence the contention of the petitioner that the transformer was erected and energised much earlier to the date of inspection is not correct."

He also reiterated that as the old meter for petitioner's Service Connection No. 670 got stuck up during the month of 11/83, it was replaced during" December, 1983 by a new meter with capacity of 100 /10 Ams with CTS having capacity of recording energy consumed by motors upto 100 HP. He further stated in the additional counter affidavit that the petitioner paid additional consumption deposit only on 20-5-1986 and he concluded the agreement for release of additional load on 10-5-1986, and that the test was conducted by the ADE / REC /Kalwakurthy and approved the installations of additional load on 1-6-1986, and that therefore the additional load must be deemed to have commenced only from 1-6-1986 and not earlier. It is thus contended on behalf of the respondents that the petitioner, without complying the requirements for release of additional load, connected the additional load unauthorisedly without approval of the Board by 15-11-1985 when the petitioner's rice mill was inspected by the Assistant Divisional Engineer (Operation), Hyderabad and, therefore, the petitioner committed malpractice which warranted the Board for making assessment.

11. The petitioner, in his reply affidavit dated 3-9-1996, questioned the assessment made by the 1st and 3rd respondents on the basis that the alleged release of supply was done only on 1-6-1986 ignoring that the additional load.was sanctioned on 18-5-1985 itself, and that at any rate the assessment could not have been made from November, 1984 i.e., for one full year prior to the date of inspection (15-11-1985) without making any estimate of the period

of the alleged malpractice. The petitioner also sought impleading of the Superintending Engineer, Assessments, Hyderabad as 3rd respondent and also sought amendment of the prayer in the Writ Petition in W.P.M.P. Nos. 23852 and 23853 of 1996 respectively and they were allowed on 12-9-1996. To complete the narration of facts, we may also state that neither the petitioner nor the respondents could give the dates when the petitioner was permitted orally to purchase and hand over the distribution transformer and when he was asked to pay the balance amount of V.L.C. of Rs. 15,775/-. The records produced by the respondents also do not indicate anywhere when the said oral permissions were granted by the authorities concerned to the petitioner and when the transformer was handed over.

12. The learned Counsel for the petitioner contends that in view of the fact that the petitioner had already applied for additional load of 40 HP and the same was sanctioned by letter dated 18-5-1985 itself, the petitioner cannot be treated as having committed any malpractice of unauthorisedly connecting the additional load of 40 HP on 15-11-1985 when the petitioner's unit was inspected by Assistant Divisional Engineer. He submits that the petitioner by that date, had already purchased and handed over the transformer to the authorities concerned which was also installed and the additional equipment was also purchased by the petitioner and was also installed and nothing more was necessary from the side of the petitioner for availing additional connected load. Admittedly, there was already a meter installed to the petitioner's rice mill which was capable of taking the higher connected load and the petitioner was paying for the energy consumed without any default. He also contends that even though the original sanction required the petitioner to pay a sum of Rs. 29,600/- towards voluntary loan contribution, subsequently the petitioner was orally permitted to purchase a distribution transformer and hand over the same to the authorities concerned for installation and was required to pay only the balance amount of voluntary loan contribution of Rs. 15,775/- which the proprietor of the petitioner concerned paid after he was asked to pay the same. According to him, there was no delay in making the said payment. The learned Counsel submits that admittedly all this transpired only on oral instructions and therefore the petitioner would not be able to establish when he was asked to purchase the distribution transformer, when he hand over the same to the authorities, and when he was asked to pay Rs. 15,775/- towards voluntary loan contribution. He also submits that the L.T. agreement was also handed over on the stamp paper soon after the transformer was purchased and handed over by the petitioner to the authorities concerned. The learned Counsel further submits that the original test report allegedly of 1-6-1986 was not produced by the respondents, and that no material was produced by the respondents to establish conclusively that supply at 70 H.P. was permitted and connected only from 1-6-1986 and not before.

13. The learned Standing Counsel for the A.P.S.E.B., Mr. K.N. Jwala, appearing for the respondents, submits that under condition 39.1 malpractice includes "any violation of law or the terms and conditions of supply framed u/s 49 of the

Electricity Supply Act, 1948 ("Supply Act" for short), and that in the present case the petitioner violated condition 17 read with conditions 16 and 13 of the Conditions. He points out that condition 17 specifically requires that during the time alterations, additions etc., are being executed "the supply to the circuit which is being altered, added to or repaired must be entirely disconnected and it shall remain disconnected until the alterations, additions or repairs have been tested and passed by the Board" as per condition 16. He further points out that in the letter dated 18-5-1985 sanctioning the additional load of 40 H.P. it was specifically stated "supply will be extended subject to availability of major materials and fulfilment of departmental formalities depending on the seniority". He submits that from the above it follows that the petitioner cannot extend the supply and connect the additional load of 40 H.P. by himself without reference to and inspection and testing and thereafter being given connection for additional load by the Board. He relies on the decision of a learned single Judge of this Court in Adoni Cotton Mills, Unit of National Textiles Corporation (A.P.K.K. and M) Ltd., (a Government of India undertaking) Vs. Chief Engineer (Electricity) A.P.S.E.B. and Another, and the decision of another learned single Judge in V.S.T. Industries Ltd., Hyderabad v. A.P.S.E.B. and Ors., W.P. No. 411 of 1986.

14. We find that the facts in Adoni Cotton Mills case¹ are materially different from the facts in the present case though in certain aspects there is some similarity. The consumer in that case - Adoni Cotton Mills - was a Government of India Undertaking and was a H.T. consumer of energy. It programmed expansion and it applied to the Board on 19-12-1979 for sanction of additional load and the additional load was sanctioned to it on 29-12-1982, after nearly three years. Even before the sanction was given, in view of urgency and need to complete the expansion programme which had to be completed by October, 1982, Adoni Cotton Mills (A.C. Mills) commenced the erection of additional equipment from April, 1982 onwards and commenced test-runs of the additional equipments from 1-7-1982, even before the additional load was sanctioned (which was on 29-12-1982) - this was found out by the authorities concerned on an inspection made on 6-9-1982 and A.C. Mills was assessed for malpractice. On behalf of A.C. Mills it was contended that it had not committed any malpractice, and that it was a public sector undertaking and it had applied for sanction of additional load in the year 1979 itself fulfilling all formalities, but the Board unnecessarily delayed sanction without any justification, and that in view of the urgency to complete the expansion programme which was a time-bound programme, it merely installed some additional frames for the purpose of trial-runs only in anticipation of proper sanction, and that commercial production was started by it only after additional load was sanctioned and released by the Board. That was resisted by the Board on the ground that A.C. Mills exceeded the contracted load without obtaining prior sanction of the Board and, therefore, it constituted malpractice. After referring to condition 17 and Rule 63(3) of the Indian Electricity Rules, 1956, which provides that "the owner of high or extra high voltage installation who makes any addition or alterations to its installation shall not connect to the

supply its apparatus or electricity supply lines comprising the said alterations or additions unless and until such alterations or additions have been approved in writing by the Inspector." C.V.N. Sastry, J., held as follows:

"It is clear from an examination of the aforesaid rules and terms and conditions of supply that it is not open to the consumer to make any additions or alterations to his service or to connect the same to supply till approval is obtained in writing from the concerned authority. The learned Counsel for the petitioner, however, contends that since the petitioner has not made any permanent additions or alterations but merely made some test-runs of the equipment, there is no violation of the above rules or terms and conditions of supply by the petitioner in this case. I am afraid it is not possible to accept this submission. In the explanation dated 3-6-1983 furnished by the petitioner in reply to the show-cause-notice issued by the Superintending Engineer, the petitioner has admitted that it completed erection of 10 ring frames and they were tested for their performance by trial runs by stopping the existing machines. Though it is stated that commercial production was not carried . on till after sanction orders were received, the fact remains that the petitioner erected some additional equipment and they were found to be put to use by the date of inspection. This, in my view, is sufficient to constitute a malpractice as Condition No. 39.2 specifically provides that exceeding the contracted load without specific permission of the Board amounts to a malpractice.....when once it is found that there has been a violation of the terms and conditions of supply, the liability to compensate the Board as laid down in the terms and conditions of supply will be attracted irrespective of proof of any actual damage suffered by the Board. In such a case loss is implied or presumed. This question has been considered by this Court in W.P. No. 411 of 1986 wherein it has been held that additions to the contracted load amounts to a malpractice within the meaning of terms and conditions and that proof of actual loss to the Board is not required. I am in respectful agreement with the view expressed in the said judgment."

In V.S.T. Industries Ltd., Hyderabad v. A.P.S.E.B and Ors. (2 supra), it was held that excess connected load was a malpractice because under condition 17 of the Conditions, additions and alterations had to be effected with the prior approval of the Board in writing and if that was done without prior approval it would be contravention of terms and conditions, and therefore it was a malpractice in terms of condition 39. That was also a case of a H.T. consumer. The learned Judge held that having entered into an agreement for supply of electrical energy, it was bound by the terms and conditions which were statutory in character, and that therefore was liable to pay the amount in demand if it was found to be a case of malpractice.

15. In the present case, two questions arise. Firstly, whether the finding in the impugned orders of respondents 3 and 1 that the petitioner committed malpractice under condition 39.1 is liable to be interfered with; and secondly, whether the assessment made by them of the loss sustained by the Board is

liable to be interfered with.

16. The first question turns on what is "malpractice" under the Conditions in force at the relevant time. Condition 39.1 defines malpractice. The definition has two parts: the first part defines "malpractice" as including "any violation of law or the terms and conditions of supply framed u/s 49 of the Electricity (Supply) Act, 1948...", and the second part defines it as including pilferage (defined under condition 39.1.7), and certain acts mentioned in conditions 39.1.2 to 39.1.6. For the present case, condition 39.1.2 is relevant which makes "exceeding the contracted load without specific permission of the Board" a malpractice. The 3rd respondent held that the petitioner was found to have connected a total load of 70 H.P. on 15-11-1985 exceeding the contracted load of 30 H.P. as on that date and that he committed malpractice under condition 39.1.2 as he connected more load than the contracted load, and that charge of malpractice of exceeding the contracted load was proved beyond reasonable doubt. The 1st respondent upheld that finding. In so holding, the respondents relied on the following facts: that he petitioner paid the balance V.L.C. amount on 21-2-1986; that he paid the security deposit only on 20-5-1986; that he concluded the agreement for release of additional load on 11-5-1986; and that these facts proved that the additional load was released only on 1-6-1986; and that the formalities for release of additional load were completed after the date of inspection i.e., 15-11-1985; and that the petitioner was not entitled to connect the additional load without fulfilling all the departmental formalities even though sanction for additional load was given on 18-5-1985, long before the date of inspection.

17. Thus, by the time inspection was made on 15-11-1985, the petitioner was given sanction for additional load of 40 H.P. under letter dated 18-5-1985 by the Divisional Electrical Engineer (Operation), A.P.S.E.B. stating that the supply would be extended subject to the condition of the petitioner paying an amount of Rs. 29,600/- towards 100% V.L.C. and Rs. 9,910/- towards subsidy. Therefore, this may not be strictly a case where the contracted load was exceeded without specific permission by the Board: it may not be stated in all fairness that there was malpractice under condition 39.1.2. At any rate, there was sanction for the additional load of 40 H.P. and the petitioner did not exceed this. It is admitted in the additional counter affidavit dated 25-8-1996 that in order to avoid delay in procuring transformer, the petitioner was permitted to obtain transformer at his cost and permitted to deduct the cost of the same from the sum of Rs. 29,600/- payable towards 100% V.L.C. and that he was asked to pay the balance of Rs. 15,775/- towards V.L.C. -all this orally. The respondents are unable to state when these oral permissions were granted, and when the petitioner actually handed over the transformer for installation and connection, and whether all this happened prior to or after 15-11-1985, the date of inspection. In spite of time having been given, the respondents were not able to clarify these aspects. One fact that stands out is - it is not in dispute and it is expressly admitted by the respondents - that by December, 1983 i.e., long before 15-11-1985, a new meter with adequate capacity for recording energy consumed up to 100 H.P. was

installed for the petitioner's Service Connection No. 670; therefore, there was no question of the energy consumed by the petitioner's rice mill with the increased load of 70 H.P. not being recorded correctly. One other fact that stands out is that the petitioner applied for the additional load on 26-5-1984 itself, and the Divisional Electrical Engineer, Operation, Hyderabad took one year for sanctioning the additional load by his letter dated 18-5-1985 - in the case of Adoni Cotton Mills (1 supra) more than three years was taken for sanctioning the additional load. This shows that these delays were common and endemic with the authorities of the A.P.S.E.B. regardless of the effect that would have on the developmental plans and finances of the consumers. The respondents want to have all these circumstances ignored while treating the petitioner as having committed a malpractice as defined under condition 39.12 and they demand the pound of flesh for the alleged malpractice by the petitioner.

18. The learned Standing Counsel for the Board appearing for the respondents submits that the petitioner violated condition 17 read with conditions 16 and 13 of the Conditions. Condition 17 requires that a consumer shall not make any alteration to his installations except as provided therein, and that he shall also not make any extension to any other adjacent premises. It, inter alia, requires that the consumer shall, where necessary, change the contracted demand or connected load, and that "during such time as alterations, additions or repairs are being executed, the supply to the circuit which is being altered, added to or repaired must be entirely disconnected and it shall remain disconnected until the alterations, additions or repairs have been tested and passed by the Board", and that provisions of condition 16 shall apply to the alterations and additions made in the installation. Condition 13.1 requires that "as soon as the consumer's installation (i.e., relating to extensions and alterations) is completed in all respects and tested by the consumer's contractor, the consumer should submit to the Board, Contractor's completion and test report". It also provides that a form for this purpose shall be supplied at the local office of the Board, and that it is important that the conditions named thereunder are fully complied with as otherwise there will be a delay in obtaining the supply. Condition 16.1.1 provides that upon receipt of the test report under condition 13.1, the Board will notify to the consumer the time and day when the Board's representative proposes to inspect and test the installation, and that it shall then be the duty of the consumer to arrange that a representative of the wiring contractor technically qualified employed by him is present at the inspection to give the Board's representative any information required by him concerning the installation; and condition 16.1.2 mandates that "no connection shall be made until the consumer's installation has been inspected and tested by the Board and found satisfactory". In the present case, no original record has been produced to establish when the petitioner's additions and alterations in the installations were inspected and tested by the Board and when the connection was given. The petitioner has also not stated when he had complied with the requirements of condition 13.1 and when his installations in respect of additions and alterations

were inspected by the Board's representative under condition 16.1.1. In his reply dated 1-10-1987 (referred to earlier) to the show-cause notice dated 27-6-1987 for final assessment under condition 39.9.1 in form in Appendix IX to the Conditions, the petitioner stated that after he received the sanction letter dated 18-5-1985 he purchased the motors for additional load of 40 H.P. and erected the same in his mill "for testing purpose by the suppliers on 10-8-1985", and that in the meanwhile the Assistant Divisional Engineer, REC/Kalwakurthy has inspected the premises and booked him under malpractice" even though the additional load of 40 H.P. has not been connected electrically". If the petitioner had completed the installation by 10-8-1985 itself, there is no reason why he had not complied with the formalities under 13.1 by submitting test report to the concerned authorities of the Board for inspection and testing by the Board under condition 16.1.2. Under the circumstances, we are not inclined to interfere with the findings of respondents 1 and 3 as regards the malpractice committed by the petitioner under condition 39.1 as found out when the inspection was made on 15-11-1985.

19. As regards the final assessment made by the 3rd respondent, which was confirmed by the 1st respondent, we have to notice that there is difference between provisional assessment under condition 39.7 and final assessment under condition 39.9. In the present case, though we are not concerned with the correctness of the provisional assessment made under the initial assessment notice dated 16-11-1985 (in the form in Appendix V applicable to "all other malpractices except pilferage and supply of electricity to a disconnected service"), we have to notice that the assessment made under that notice was adopted by the 3rd respondent in issuing show-cause notice for final assessment under condition 39.9.1 (in the form in Appendix IX). Condition 39.7 classifies malpractices into three broad categories for the - purpose of provisional assessments:

(i) malpractices under condition 39.1.1 i.e., supply of electricity to any service which is disconnected or illegal restorations of supply to the consumer's own disconnected premises where the electricity consumed was metered:

(ii) malpractices other than those mentioned in Sub-clause 39.7.1;

iii) pilferage of energy.

The present case falls under the second category and that is dealt with by condition 39.7.2 under which formulae are given for making provisional assessments stating as follows:

"Assessment in the aforesaid cases shall be made for the estimated period of malpractice subject to a maximum period of one year prior to the date of inspection and the quantity of electricity so arrived at shall be charged at the special rate as prescribed in clause 39.12.1 hereunder" .

Under Clause 39.12.1 for L.T. industrial category, the rate fixed is Rs. 1.50 ps.

per unit and this is the rate applicable to the present case. From the above it follows that the period of malpractice has to be estimated by the authority making the provisional assessment and that period cannot exceed one year prior to the date of inspection. The authority concerned cannot mechanically or arbitrarily take the said period at the maximum of one year and there should be some basis and reasons given for making the estimate. The Assistant Divisional Engineer, Operation, who issued the provisional assessment notice dated 16-11-1985, seemed to be oblivious of the fact that he could not take the period of malpractice as one year prior to the date of inspection in a mechanical and arbitrary manner and that he had to make the estimate after applying his mind to the facts and circumstances of the case and give his reasons for making the estimate as he did. In the present case, no reason whatsoever was given for estimating the period of malpractice at the maximum of one year prior to the date of inspection. On this ground, therefore, his estimate is liable to be set aside as arbitrary and without any basis and reasons.

20. The form of show-cause notice under condition 39.9.1 for making final assessment in the case of malpractice including supply of electricity to disconnected service, prescribed in appendix IX also has a column as follows:

"Estimated consumption for the period from ... to ... during which it can be reasonably assumed that energy was misused/pilfered".

The notice issued by the 3rd respondent for final assessment in the present case also raised a demand estimated in the same manner i.e., one year period of malpractice prior to the date of inspection. No reason was given for taking the period "during which it can be reasonably assumed that energy was misused" as one year. See *Andhra Ice Factory v. A.P.S.E.B.* The final order of the 3rd respondent dated 15-10-1987 also did not give any reason for making such an estimate on the basis of malpractice for the maximum period of one year.

21. We have also to notice that the final assessment has to be made in accordance with conditions 39.9.2 and 39.9.3 which are as follows:

"39.9.2. The said officer of the Board shall, after the expiry of the aforesaid notice period, enquire into the matter and after giving reasonable opportunity to the consumer and taking into account all the relevant facts and circumstances shall decide whether the consumer has committed malpractice or pilferage of energy and if so satisfied proceed to assess to the best of his judgment, the loss sustained by the Board on account of such malpractice or pilferage of energy by the consumer. The consumer may be represented by an advocate or any other person at the time of personal hearing provided the consumer files proper Vakalatnama or power of Attorney as the case may be.

39.9.3. The final assessing authority shall then pass an order setting out his conclusions and the reasons thereof and communicate a copy of the order to the consumer and demand the amount, if any due from the consumer on the basis of such order after giving credit to the amounts paid by him"

From a reading of the above conditions, it follows that, Firstly, the final assessing authority has to apply his mind and decide whether the consumer committed malpractice after "taking into account all relevant facts and circumstances": Secondly, if he decides that the consumer committed malpractice, he should proceed to "assess to the best of his judgment" the loss sustained by the Board on account of such malpractice by the consumer; and Thirdly, he shall pass an order setting out his conclusions and "the reasons therefor". It is obvious, therefore, that the assessment to be made by the final assessing authority to the best of his judgment must be based on the facts and circumstances of the case and that he has to give his reasons for making the assessment. There are malpractices and malpractices - all malpractices cannot be treated alike or by the same yardstick; the conditions themselves make a distinction. Malpractices involving large scale pilferage or venal abuses cannot be treated on par with malpractices involving violation of some procedural conditions which do not result in any loss or detriment to the Board. It is clear that the authorities concerned will have to exercise their discretion not arbitrarily or mechanically but reasonably and fairly keeping in view the facts and circumstances of the case on hand and giving reasons in justification of the exercise of their discretion in the manner they do. Reasons make the exercise of the discretion and the decision making process transparent and open to scrutiny.

22. In the present case, no reasons whatsoever were given by the 3rd respondent in estimating at Rs. 38,737.45 ps. the value of loss of energy sustained by the Board on account of the malpractice by the petitioner i.e., by taking the period of malpractice as the maximum period of one year prior to the date of inspection. The 1st respondent has also not given any reasons for making such an estimate; he had given reasons only for his conclusion about pilferage. Condition 39.10.5 mandates that "the appellate authority shall give his reasons for his conclusions except in cases where the appeal is allowed in toto". The impugned assessments made by the 3rd and 1st respondents are, therefore, liable to be set aside and they are accordingly set aside. It is open to the 3rd respondent to initiate by giving notice to the petitioner within six weeks from to-day proceedings afresh under condition 39.9.2 for assessing to the best of his judgment the loss sustained by the Board on account of the malpractice by the petitioner as found in the present case keeping in view the facts and circumstances of the case and giving his reasons.

23. On the facts of the present case, we are also inclined to take the view that unless cogent reasons are made out, the period of malpractice cannot be arbitrarily estimated as one year prior to the date of inspection. When the authorities themselves are in the habit of delaying sanctioning of additional loads for years together for one reason or other, and even after sanctioning the same they are unable to supply the transformers etc., and take their own leisurely time for extending the supply, consumers cannot be further harassed by alleging malpractices which are technical in nature as in the present case. This is not a case of pilferage or illegal restoration of disconnected service or absence of

permission for increasing load by which the Board has suffered any loss - a meter of adequate capacity was already installed to the petitioner's Service Connection. It is not the case of the respondents that correct readings of the actual energy consumed were not being taken. This case and Adoni Cotton Mills case clearly establish the imperative need for the Andhra Pradesh State Electricity Board to organise itself to render prompt and reasonable services to L.T. and H.T. industrial customers in time when modern industrial competition and financial imperatives do not brook or tolerate any delays. If the Board is not in a position to supply additional load or energy in view of shortages, it is but proper that the same should be intimated without any delay to the customers indicating when it would be able to do so.

24. We have also to point out that in the present case, apart from the fact that an application for additional load dated 26-4-1984 was sanctioned after more than a year i.e., on 18-5-1985, final assessment proceedings were initiated by the 3rd respondent by his show-cause notice dated 27-6-1987, more than one and half years after the inspection on 15-11-1985 and provisional assessment notice dated 16-11-1985. This is what the Supreme Court states in *Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another*, dealing with sales tax assessments:

"Before we part with case, we would like to indicate that assessment of tax should be completed with expedition. It involves the revenue to the State.....If a timely assessment is completed, the dues of the State can be conveniently ascertained and collected. Delay in completion of assessment often creates problems. The assessee would be required to keep up all the evidence in support of his transactions. Where evidence is necessary, with the lapse of time, there is scope for its being lost. Oral evidence as and when required to be produced by the assessing authority may not be available if a long period intervenes between the transactions and the consideration of the matter by the assessing authority. Long delay thus is not in the interest of either the assessee or the State..... In several taxing statutes, even in a situation like this, where assessment u/s 11(3) or 28(3) of the respective Acts is contemplated, a period of limitation is provided. Until by statute, such a limitation is provided, it is proper for the State Governments to require, by statutory rules or appropriate instructions, to ensure completion of assessments with expedition and reasonable haste but subject to rules of natural justice".

These salutary observations by the Apex Court regarding expeditious completion of assessments clearly apply to the assessments to be made in respect of malpractices including pilferage, by the Officers of the Andhra Pradesh State Electricity Board.

25. If the fresh assessment proceedings as indicated by us above are not initiated by the 3rd respondent or by the proper authority now competent to initiate such assessment proceedings within six weeks from today, the respondents are directed to refund forthwith the sum of Rs. 18,402.50 ps. paid

by the petitioner by way of demand draft on 21-11-1985 pursuant to the provisional assessment notice dated 16-11-1985 and any other sums paid pursuant to the impugned orders of the 3rd and 1st respondents, which are now set aside. It is open to the respondents to make the said repayment by way of adjustment towards the bills payable by the petitioner to the Board. If, however, the 3rd respondent or the competent authority initiates fresh final assessment proceedings, the said proceedings shall be completed within three months from the date of initiation of the said proceedings and the amounts already paid by the petitioner referred to above shall be adjusted towards the amounts payable, if any, under fresh final assessment order and the balance shall be repaid in the manner indicated above.

26. In the result, the Writ Petition is allowed to the extent indicated above. No costs.