

(1990) 10 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 10544 of 1980, C/W W.P. No's. 16046 of 1980 and 179 of 1981

Kap Steel Ltd. and another

APPELLANT

Vs

Karnataka Electricity Board and another

RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Contract Act, 1872 — Section 74
Electricity Act, 1910 — Section 24, 78 A

Citation : AIR 1991 Kar 220 : (1990) ILR (Kar) 4205 : (1991) 1 KarLJ 50

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : S.C. Sundaraswamy, for the Appellant; M.R. Narasimha Murthy and C.R.V. Swamy, for the Respondent

Judgement

Rama Jois, J.—In these three writ petitions, the petitioners have questioned the legality of the demand made by the respondent -- Karnataka Electricity Board ("the Board" for short) of certain amounts as commitment charges.

2. The facts of the case, in brief, are these :

(i) In W. P. No. 10544 of 1980. This petitioner-company was promoted by one of the partners of the firm Ramchand Jagdishchand, with the object of establishing a mini steel plant at Whitefield near Bangalore. He applied to the Karnataka Industrial Areas Development Board for allotment of requisite land for constructing the factory at Whitefield in the year 1973. Simultaneously, he applied to the Karnataka Electricity Board for sanction of high tension electric power required for the steel plant and informing the Board that they may be requiring the power supply from about November or December. 1984. The Electricity Board gave sanction of 6000 KW of electric power by communication dated 30-1-1974 (Annexure-B). The relevant portion of the communication reads :

"Dear Sirs,

Sub : Power supply to an extent of 6000 KW to your proposed industry.

Ref: Your letter No. Nil dated 1-9-1973.

With reference to your above letter requesting for sanction of power supply to an extent of 15000 KVA for your industry at Bangalore, we write to convey sanction of power supply to an extent of 6000 KW only subject to the following conditions :

1. The power supply will be arranged at 66 KV.
 2. You should provide the necessary transformers at your end to receive power and step it down to the required distribution voltage for your industry.
 3. Necessary Municipal/Corporation/Village Panchayat Licence should be produced to the concerned Executive Engineer (Electrical) of the Division.
 4. You should enter into an agreement with the Board within a period of two months from the date of this power sanction in the prescribed form as per the "Conditions of Supply of Electrical energy" of the Karnataka Electricity Board, failing which the sanction will stand automatically cancelled.
 5. The power tariff applicable to your industry will be HT-I(A) in force subject to revision from time to time.
 6. You shall deposit with the Board an amount equivalent to three months Minimum Deposit calculated on the basis of monthly consumption charges for the quantum of power cited above, which will be intimated by the Chief Engineer, Electricity (General), KEB, Bangalore.
 7. The deposit shall be paid only in cash and no bank guarantee would be acceptable.
- The amount of Rs. one lakh shall be paid in cash and one-half of the balance in cash and the other half in the form of bank guarantee acceptable to the Board for a period of not less than 5 years.
8. No interest is payable on this three months' minimum deposit.
 9. In case of any delay in availing power supply beyond the agreed date commitment charges per month equivalent to Demand Charges on 75% of the contract demand calculated at HT-I(A) Tariff Rates shall be payable for the period of such delay.
 10. In case you fail to avail power supply at all, the deposit so paid by you shall be forfeited to the Board.
 11. Power requested for will be utilised only for mini steel plant but not for a rolling mill.
 12. Please confirm if necessary advance action was taken by you for placing

orders for machinery, purchase of land and other equipments prior to 31-10-1973.

You are requested to contact the Superintending Engineer (El.), Karnataka Electricity Board, Bangalore Circle, Bangalore, and the Executive Engineer (Elect.), East. Div., Bangalore for further needful in the matter."

(Underlining by us)

Shortly after the said letter, the Board by its letter dated 25-3-1974 (Annexure-C) informed Ramchand Jagdishchand that the latter had indicated to the Board that the power would be availed from November, 1974. Immediately, on 27-3-1974 Sri Ramchand Jagdishchand informed the Electricity Board that they would require electricity not before June 1975. Relevant portion of the said letter reads :

"Dear Sir,

With reference to your letter No. KEB A10-4264/73-74 dated 30th January, 1974, we would like to inform you that as there was considerable delay by you in sanctioning the electricity to us, so the C.O.B. Industrial Licence could not be granted earlier. We have received the licence now only, a copy of which is enclosed herewith for your ready reference. In the absence of your sanction and licence we could not proceed with the project as originally planned. All the financial institutions as well as Banks did not process our applications in the absence of your sanction as well as the licence. This has caused a considerable setback in the implementation of our project as per originally scheduled.

In our application dated 1st September. 1973 we had asked for power supply in the month of November/December, 1974, but now we will require the same not before the month of June, 1975. So please instruct the Chief Engineer, concerned accordingly and oblige."

By another letter of the same date (Annexure-E), Sri Ramchand Jagdishchand informed the Electricity Board that the partnership firm of which he was a partner, to whom the supply of electric power was sanctioned, had decided to establish the mini steel plant under a company in the name and style of Kap Steel Limited" and requested the Board to change the sanction in favour of Kap Steel Limited. The Board by its letter dated 18-9-1975 (Annexure-F) agreed for the transferring of the sanction of power from the firm to M.s. Kap Steel. Thereafter, on 11-11-1976 an agreement was entered into between Kap Steel Limited the petitioner, and the Board regarding the supply of 6000 KW electric power. The relevant clause relating to the contracted demand and commitment charge is at paragraphs 3 and I6(b)(iii) of the agreement. It reads :

"3. CONTRACTED DEMAND : During the period of supply hereinafter mentioned the supplier shall supply to the consumer and the consumer shall take from the supplier electrical energy required by the consumer for the purpose herein above recited at the point of supply up to a maximum of-

1. 6666 KVA (hereinafter termed as contracted demand for the year from Nov., 1974)
2. ---- KVA (---do---)
3. ---- KVA (---do---)
4. ---- KVA (---do---)
5. ---- KVA (---do---)

subject to the provisions of Cls. 1 I(b) and 12(b) hereof.

XXX XXX XXX 16(b) COMMENCEMENT OF SUPP-1A ; (iii) The consumer hereby agrees to pay the supplier every month the commitment charges equivalent to demand charges on seventy five per cent (75%) of the contracted demand calculated at H.T. 1A Tariff Rates prevailing at that time as applicable to the consumer under this agreement for the entire period of delay in availing power supply reckoned from the date indicated, vide Cl. 3 supra up to the date of actual avail of the power supply."

(Underlining by us)

There was delay in the commencement of mini steel plant for various reasons and ultimately the actual supply was taken by the petitioner from 28-3-1977. Thereafter, on 27-3-1979 (Annexure-O). addressed by the Assistant Executive Engineer (Elecl.) of the respondent-Board to the petitioner, commitment charges were demanded. The said letter reads :

"I write to state that you have availed power supply on 28-3-1977 as against the agreed dated of 1-11-1974. Hence you are liable to pay commitment charges from 1-11-1974 to 27-3-1977 at 75% of CD. which works out to Rs. 16,40,907-29 (Detailed statement of calculation is enclosed).

You are requested to make arrangement for the payment of the above amount within 15 days from the date of this letter.

Yours faithfully, Sd/- . Asst. Ex. Engr. Elecl."

The petitioner made a representation requesting the Board to withdraw the demand regarding commitment charges. Thereafter, on 11-7-1980 (Annexure-V), the Executive Engineer issued a notice calling upon the petitioner to pay the commitment charges and the petitioner was also informed that if the same was not paid the power supply will be disconnected. The relevant portion of that notice reads :

"With reference to the above, I write to inform you that the commitment charges of Rs. 16,40,907-29 Ps. is not paid by you till today, in spite of the order. You are hereby requested to pay the amount as follows :

(i)

Commitment charges

Rs. 16,40,907-29 Ps.

(ii)

Less Tax refundable

Rs. 1,08,354-19 Ps.

(iii)

Less Power factor penalty excess collected

Rs. 1,19,897-84 Ps.

Net commitment charges payable after deducting the refundable tax of excess P.F. penalty collected.

Rs. 14,12,655-26 Ps.

You are hereby requested to pay this amount on or before 19-7-1980, or else please take notice that power supply will be disconnected to your installation of R.R. No. E4 HT-8I on 21-7-80. Forenoon, without any further notice. This amount payable from you is in addition to the monthly bills payable by you, which may kindly be noted.

Please acknowledge the receipt of this letter.

Yours faithfully, Sd/- Ex. Engineer, Elecl., East Division."

Questioning the legality of the said notice, the petitioner has presented this writ petition.

(ii) Re. W.P. No. 16046/1980 : The grievance of the petitioner in this writ petition is also against commitment charges demanded by the Electricity Board. In the case of this petitioner, the Board had conveyed its sanction for supply of power to an extent of 6000 KW subject to the conditions incorporated in the letter dated 30-1-1974. The clause relating to commitment charges is similar to the one extracted earlier, while Stating the facts of the first petition. In the case of this petitioner, the agreement was executed on 23-9-1974 but actual service of electric power was taken w.e.f 13-10-1976. The relevant portion of the letter demanding the commitment charges dated 12-12-1977 (Annexure-E) reads :

"Sub : Payment of commitment charges in respect of RR No. HT-45.

Ref: T.O. Letter No. AAO(R)HT/1608-11 dt. 26-5-77 and 7795-98 dt. 19-9- 77.

With reference to the above, I wish to inform you as per Board Order No. KEB/ B3/ A10/4264/72-74/7-2-77, the commitment charges payable by the above firm, has been claimed from 1-6-75 to 13-10-77, instead of from 1-1-75 to 13-10-77. The details are as follows. Payments may kindly be arranged to be paid immediately.

Commitment charges from 1-6-75 to 13-10-77

Rs. 9,24,375-00

Interest up to 28-11-77

Rs. 2,57,390-70

Total

Rs. 11,81,765-70

Yours fiathfully, Sd/- Exe. Engineer, Elecl., City Area Divn., Mysore."

The commitment charges were demanded from 1-1-1975 to 13-10-1976. As in spite of demand the petitioner did not pay. a notice threatening disconnection was issued and thereafter the petitioner has presented this writ petition.

(iii) Re. W.P. No. 179 of 1981 : In respect of the petitioner in this petition also, sanction was given on 30-1-1974 vide Annexure-B, but the sanction given was for supply of power to the extent of 6500 KVA. The condition regarding commitment charges specified in the said sanction was similar to the one in the other two cases. By letter dated 25-3-1974 (Annexure-C), the Electricity Board informed the petitioner that the petitioner would be liable to pay commitment charges from 1-4-1975. By notice dated 26-3-1979 to 4-4-1979 (Annexure-K), the Assistant Executive Engineer of the Board called upon the petitioner to pay the commitment charges from 1-4-1975 to 17-4-1976. The relevant portion of the demand reads :

"Dear Sirs,

Sub : Payment of commitment charges due in respect of power supply to 6500 KVA to RR No. W10 HT-6 at Peenya Industrial Area.

With reference to the above, we write to inform you that the K.E.B. have finally passed orders to collect the commitment charges due with interest from H.T. consumers up to 17-4-1976. Accordingly, commitment charges due from you 1-4-1975 to 17-4-1976 has been worked out at Rs. 5,98,774-96 (excluding the period of waiver of commitment charges i.e. from 24-11-75 to 31-12-75) vide B.O. No. KEB/B13/ A10/4264/73-74 dated 11-12-1975). Please arrange to pay the same within 15 days from the date of this letter, or otherwise, we will be constrained to disconnect power supply to your above H.T. installation without further notice which please note.

Yours faithfully, Sd/ Asst. Exe. Engineer (Elecl.), NI Sub-Division."

The petitioner made a representation for waiving the commitment charges, but the request was not complied with. Thereafter, on 2-11-1980 (Annexure-N), a notice was issued calling upon the petitioner to pay the amounts specified in the said notice, failing which the petitioner was informed that action would be taken to disconnect the electric supply. The relevant portion of that notice reads :

"Dear Sirs,

Sub: R.R. No. W10HT-6 -- payment of commitment charges of Rs. 5,98,774-96 and balance of revised revenue demand of Rs. 1,20,153-45.

Ref: Letter No. CCE(S)/AA02/N1/C5/ 12947-51 dated 22-11-1980.

With reference to the above, I write to inform you that, you are requested to pay the following amounts apart from monthly bill as per letter cited under reference within fifteen days time from the date of receipt of this letter, otherwise action will be taken to disconnect the installation as per rules.

1.

Towards commitment charges

Rs. 5,98,774-96

2.

Towards balance of revised revenue demand

Rs. 1,20,153-45

Total :

Rs. 7,18,928-41

Yours faithfully, Sd/- Asst. Exe. Engineer, Elecl., No.5 Sub-Division."

Questioning the legality of the said notice, the petitioner has presented this petition.

3. In all the three cases it is averred by the Board that each of the petitioners had given undertaking to pay the commitment charges. A copy of such undertaking given by the petitioner in W.P. No. 179 of 1981 is produced. It reads :

UNDERTAKING

We are aware that the power supply is arranged by the Board without prejudice to the right of the Board to collect the commitment charges payable by us and we are agreeable to abide by the final decisions of the Board in this regard, in terms of the supply agreement dated 30th March, 1974.

For Brindavan Alloys Ltd., Sd/- Managing Director."

It is not disputed that the two other petitioners also had given such undertaking. But after the final decision of the Board, instead of making payment as undertaken, these writ petitions were made before this Court.

4. In all these cases, as common questions of law arise for consideration, they are disposed of by this common order.

5. Sri S. G. Sundaraswamy, learned senior counsel, argued for the petitioners and Sri R. N. Narasimha Murthy, learned Senior counsel, addressed arguments for the Electricity Board.

6. The learned counsel for the petitioner urged the following contentions :

(1) The claim of the respondent-Board is in the nature of damages and unless the damages are quantified by a Civil Court and decree, the Electricity Board is not entitled to recover the same by resorting to coercive measures,

(2) Section 24 of the Indian Electricity Act, 1910 does not authorise the Board to cut off the supply of electricity for non-payment of the commitment charges.

(3) The clause relating to commitment charges is an unreasonable condition imposed on the petitioner by the Board for the reason that the Board thereby is trying to collect huge amounts for nothing at all, in that, the Board has not supplied any electric power to the petitioner and in fact the Board must have supplied the same to some other consumers and collected charges as electric power could not be stored and therefore the demand is wholly unreasonable.

(4) The Government had issued directions to the Board under S. 78-A of the Electricity Supply Act to waive the commitment charges and though the said direction is binding on the Electricity Board, they are still enforcing the commitment charges.

(5) In any event, the computation of commitment charges and the date from which the commitment charges and interest is demanded in the impugned notices are illegal and arbitrary.

7. In support of the first, second and the third contentions, the learned counsel for the petitioners relied on the following three judgments of the Supreme Court :

(i) Union of India (UOI) Vs. Rampur Distillery and Chemical Co., Ltd., . In this case, the Supreme Court held that the Government as a party to a contract was not entitled to forfeit the security deposit, on ground of default when no loss was caused to the Government.

(ii) Union of India (UOI) Vs. Raman Iron Foundry, In this case, the Supreme Court held that a claim for damages does not create a pecuniary liability till the Court determines that the party complaining of the breach is entitled for damages. Such a sum cannot be said to be an amount due and payable in presenti and that it was in the nature of a claim for unliquidated damages and does not give rise to a debt.

(iii) Maula Bux Vs. Union of India (UOI), . In this case, the Supreme Court held that the Indian law does not permit the imposition of penalties for breach of contract and in the present case the commitment charges demanded from the petitioner was in the nature of penalty for not taking electricity supply on agreed date and therefore such a condition is violative of S. 74 of the Contract Act and therefore it cannot be enforced.

Relying on the above decision, the learned counsel for the petitioner submitted that :

(i) the Electricity Board was a party to a contract and therefore it cannot quantify the damages payable by the petitioner for breach of the contract and proceed to enforce recovery of the same;

(ii) the Board had suffered no loss as the electric power could not be kept unutilised and the Board would have supplied to other consumers and collected money for the same and therefore collecting commitment charges was impermissible in law and that it would amount to unjust enrichment by the Board and a penalty to the petitioner; and

(iii) Section 24 of the 1908 Act empowers the Board to disconnect supply of electricity only for non-payment of electricity charges and not for non-payment of any demand for damages made by the Board particularly when it is disputed by the consumer.

8. Sri R. N. Narasimha Murthy, the learned counsel for the Board, however, submitted that the ratio of the decisions on which the learned counsel for the petitioner rely are wholly inapposite to the question arising for consideration. The learned counsel in support of his submission, submitted as follows: The Electricity Board is a statutory Board established under the provisions of the Electricity Supply Act, 1948. The powers and duties of the Board are regulated by the Act. Section 49 of the Act expressly empowers the Board to impose the conditions for the supply of electric energy. Accordingly, Regulations have been framed. Clause (4) of Regulation 55-B provides for payment of commitment charges. The relevant portion of the Regulation reads :

"55-B: DEPOSITS PAYABLE BY H. T. CONSUMERS WHO AVAIL POWER SUPPLY ON OR AFTER 1ST JANUARY, 1973 :

xxx xxx xxx 4. The consumer should pay commitment charges at 75 per cent. of the contracted demand if the industry fails to avail power supply on the date agreed to till the date they avail power supply."

The above Regulation expressly provides that a H. T. electricity consumer has to pay commitment charges on the 75% of the contracted demand from the date with effect from which he had agreed to take supply of electricity till the date on which the electric power was actually taken. Whenever a person makes an application to the Board seeking sanction for supply of electric power, the Board having due regard to the quantum of electricity generated by it and also having due regard to the surplus electricity available, the Board sanctions specific quantum of electricity to the applicant concerned. The sanctioning of power is in the nature of a commitment on the part of the Electricity Board to supply the said quantum of electricity to the person concerned from the date he had agreed to avail it. Therefore, once the Board sanctions any specified quantity of electric power to an intending consumer, the Board, in considering any further

application for power from any one else in finding out as to whether power is available for such sanction has to take into account the power already sanctioned to any one earlier and if on taking that into account there is no surplus power, the Board cannot sanction. It is this circumstance which is the basis for the Regulation 55(4), Therefore, if a person to whom the power was sanctioned earlier fails to avail the electricity from the date from which he had agreed to avail, whatever be the reason, for the period for which he fails to take supply, Regulation 55-B(4) requires payment of charges calculated on the basis of 75% of the contracted demand. It is part of the charge for supply of electricity and therefore Section 24 of the 1908 Act could be invoked for enforcing recovery of the commitment charges. In each of the cases, there is no dispute about the contracted demand of electric power. Further, each of the petitioners had indicated the date from which he would take the supply of the electricity. There is also no dispute as to the date from which the electric power was taken. It is for the intervening period, the petitioners were required to pay commitment charges in accordance with Regn. 55-B(4) of the Regulations. This statutory condition was set out in the letter conveying the sanction of power. It was no doubt incorporated in the agreement executed between each of the petitioner in favour of the Board. But the fact remains, it is not a contractual obligation but a statutory condition incorporated in the regulations framed by the Board in exercise of its power under S. 79 read with Sec. 49 of the Act vide Regulation 55(4). The validity of that Regulation has not been challenged in those petitions. The liability of each of the petitioners is therefore statutory and not contractual. Therefore, the ratio of the decisions on which the petitioners rely have no application. Section 24 of the 1908 Act expressly authorises the Board to disconnect the supply of electricity for non-payment of electricity charges. The commitment charge is nothing but a charge for supply of electricity and therefore can be resorted to for non payment of commitment charges also. It is a coercive power conferred on the Board, which is "State" as defined in Art. 12 of the Constitution, for using it for collecting the electricity charges due to it.

9. In support of his contention, the learned counsel for the Board relied on the judgment of the Supreme Court in the case of Bihar State Electricity Board v. Green Rubber Industries --(4). In that case, the question for consideration was whether the condition imposed by the Bihar State Electricity Board for payment of minimum guaranteed charges even for the period when the consumers had not utilised electric power was valid and enforceable, and whether even after disconnection for non-payment of bills, the Board was entitled to collect the minimum guaranteed charges until the supply was restored.

10. In the aforesaid decision, the Supreme Court considered the scope of the power of an Electricity Board u/s 49 of the 1948 Act and answered the questions in the affirmative. The relevant portion of the judgment reads (at page 703) :

"14. Section 49 of the Supply Act makes provision for the sale of electricity by the Board to persons other than licensees. Under sub-section (1), subject to the

provisions of the Supply Act and the Regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purpose of such supply frame uniform tariff. Under sub-section (2) thereof nothing in sub-sections (1) and (2) shall derogate from the power of the Board if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors. Sub-section (2) enumerates the factors to be considered by the Board in fixing the uniform tariffs, (at page 705)

xxx xxx xxx 21. It is true that the agreement is in a standard form of contract. The standard clauses of this contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed : "If fairness or reasonableness was relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable". *A Schroeder Music Publishing Co. Ltd. v. Macaulay* (1974) 3 All ER 616 (624). In such contracts a standard form enables the supplier to say : "If you want these goods or services at all, these are the only terms on which they are available. Take it or leave it". It is a type of contract on which the conditions are fixed by one of the parties in advance and are open in acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. In view of clause 4 having formed one of the stipulations in the contract along with others it cannot be said to be *nudum pactum* and the maximum *nudum pactum ex quo non oritur actio* does not apply. Considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be *ultra vires* on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual. where the basis of supply is held to be statutory rather than contractual. In cases where such agreements are made the terms are supposed

to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made, as was held in *Northern Ontario Power Co. Ltd. v. La Roche Mines Ltd.* (1938) 3 All ER 755.

22. For the foregoing reasons, we have no hesitation in holding that the agreement was reasonable and valid and it was not deter mined with the disconnection of supply to the respondent firm by the Board on 28th September 1981 but only according to the stipulation in Cl. 9(b) of the agreement as discussed above. The liability to pay the minimum guaranteed charges, there fore continued till the determination of the contract. The Board was, therefore, entitled to submit the bills and make the demand on that account, and recover the same according to Saw."

(Underlining by us)

The learned counsel pointed out that though in the said case, the demand, which was the subject matter of consideration, was the liability to pay electricity charges for the period during which the electricity was not availed of by the consumer and there had been even disconnection, the Supreme Court held that minimum guarantee charges could be collected by the Board. He submitted that in the said case as well as in this case what is demanded is the payment of charges during the period when the consumer concerned had not utilised the electricity power sanctioned and that the only difference was that in the present cases it is for the period before taking the connection and in the case of *Green Rubber Company*, it was after taking connection and that makes no difference in principle. Therefore, the learned counsel submitted that in view of the ratio of the said judgment, there was no substance in the contention of the petitioners that the demand of commitment charges was in violation of law. The learned counsel also relied on the judgment in the case of *Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others*, , in which upholding the power of the Board to insist on payment of security deposit for supply of Electric Power, the Supreme Court said thus (at page 1299) :

"7. We are of the view that the Board has been conferred with statutory power u/ s 49(1) of the Act to determine the conditions on the basis of which supply is to be made. This Court in *Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another*, took the view that enactment of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applies to the tariff would equally apply to the security, that being a condition in the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time of entering into their respective supply agreements. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck down as being without jurisdiction. Section 49(1) of the Act clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit.

In exercise of this power the Board had initially introduced the condition regarding security and each of the petitioners had accepted the term".

He therefore submitted that the contention of the petitioners raised against the demand of commitment charges were devoid of any merit.

11. Now, we proceed to consider the validity of the rival contentions. As pointed out by the learned counsel for the Board while sanctioning any particular quantum of electricity to any particular applicant particularly in respect of high tension consumers, the Board had to do so having due regard to the extra electric power available for supply to such an applicant. Once the Board gives sanction for supply of specified quantum of electric power to any particular consumer, the Board cannot, until the same is cancelled, proceed to sanction the same quantity of electric power to any other consumer. In other words, it is a commitment on the part of the Board to reserve that amount of electric power to the consumer concerned and a commitment on the part of the latter to take the supply. Therefore, it is not correct, as contended by the learned counsel for the petitioners, that the Board is free to supply the electric power to another consumer until a person to whom sanction is given takes the supply. The only way in which the said quantity of power could be supplied to any other consumer is after sanctioning the supply to him after cancelling the sanction made in favour of a person earlier. Therefore, when the Board commits to supply a particular quantum of electric power to an applicant and the applicant agrees to take supply on a particular date, if he fails to take the supply of electricity from that date, he is bound to pay the commitment charges at the prescribed rate till he takes the actual supply. Though the condition is incorporated in the Act, the fact remains that it is a statutory liability arising from Regulation 55-B(4) which he is bound to pay for having got a specified quantity of power reserved in his favour from a specific date and failing to utilise the same from the agreed date. The validity of the Regulation 55-B(4) has not been challenged in these petitions. Therefore, we find no substance in the contention of the petitioners that they are not liable to pay commitment charges. Once the liability is found to be statutory, the Board is entitled to invoke S. 24 to disconnect the supply of power as it is a method for enforcing the amount due to the Board. For these reasons, we reject the first, second and the third contentions.

12. The fourth contention of the petitioners has been that there was a letter by the concerned Minister to the Board to waive the commitment charges and that the said letter was a direction issued u/s 78-A of the Act, which was binding on the Board. The relevant portion of the letter dated 6-6-1974 reads :

"S. M. Krishna,

Minister of Industries.. 6th June 1974.

Dear Sri Sivaprakasam.

Messrs. Kap Steel Ltd., a mini steel plant, coming up in Bangalore, which has

been promoted by Messrs. Ramchand Jagdishchand who have obtained the Industrial Licence have been sanctioned power already.

They were one of the earliest in the group of Mini Steel Plants to come to the state and were in fact encouraged to shift from Maharashtra to this place as they were potentially a major entrepreneur who could be counted upon to take up major investments in the Fifth plan.

Through no fault of theirs, their power sanction and consequently their industrial licence was delayed by more than six months and they were advised by us to go slow with their commitments and arrangements so that unproductive and premature investment could be minimised.

When the sanction of power has been delayed by ourselves and has been the reason for delaying the entire project of the entrepreneur, putting them to serious financial hardship and upsetting their plans, I feel it would be a positive disincentive if the Board insisted on recovering commitment charges on the basis of the applicant's original project schedule.

They have sought levy of commitment charges from a revised date which is related to communication of sanction of power to them. I request you kindly consider this most sympathetically".

It is difficult to appreciate as to how this letter is of any assistance to the petitioner in W. P. No. 10544 of 1980. for the letter is dated 6-6-1974 and the commitment charges demanded is from 1-11-1974 and it is only a letter from the Minister and not a direction u/s 78-A of the Act.

13. The learned counsel for the petitioners relied on a Government Order dated 14-4-1977 to say that the Government had exempted the petitioners from paying commitment charges. The Government Order reads :

"ORDER NO. PWD.107-EIP.75. BANGALORE 14TH APRIL, 1977

XXX XXX XXX ORDER

After considering all aspects of the case, Government are pleased to waive the commitment charges for non-a ailment of power from the agreed dates in respect of the H.T. consumers who have paid earnest money deposits in accordance with the norms laid down in the Government Orders dated 29-7-75 and 18-12-75 read above.

This order issues with the concurrence of Finance Department vide O.O. Note No. FD.4191/D.S (B&R) dated 14-12-1976, and Commerce and Industries Department vide their U.O. Note No.CI.207 FMI dated 3-1-1976.

By Order and in the name of the Governor of Karnataka. Sd/- (T.S. Gurusiddaiah), Dy. Secretary to Govt.. P.W. & Elecy. Department."

The learned counsel for the petitioners submitted that the said order amount to a direction u/s 78-A of the Supply Act and therefore binding on the Board.

14. The learned counsel for the Board does not dispute that the said order is a direction u/s 78-A of the Act, but he pointed out that it was applicable only to such consumers who had paid earnest money deposits in accordance with the Government Orders dated 29-7-1975 and 18-12-1975 and according to those orders a consumer had to deposit in cash an amount equal to estimated electricity charges for three months. The petitioners do not dispute that they have not made such deposits. Therefore, the said orders are not applicable to the petitioners.

15. Now coming to the fifth contention regarding the correctness of the quantum of commitment charges demanded and the interest charged thereon, the learned counsel for the petitioners submitted that even assuming that the petitioners were liable to pay commitment charges, the quantification of commitment charges was erroneous and contrary to law. In particular, the learned counsel urged the following points:

(1) The date with effect from which the petitioner agreed to take electric supply has been fixed arbitrarily.

(2) During the relevant period, there was power-cut effected pursuant to a notification issued by the State Government u/s 22-A of the Act, and therefore even if actual supply had commenced, the Board could have supplied only that much of electric power as permitted by the power-cut notification, and therefore the commitment charges could have been computed only to the extent of 75% of the power which the Board lawfully entitled to supply during the relevant period.

(3) According to the Circular of the Board dated 1-3-1979, no interest on commitment charges could be levied till the expiry of 15 days after the date on which the demand notice was served.

(4) There has been unreasonable delay on the part of the Board in approving designs regarding installation and the Board cannot compel the petitioners to pay the commitment charges at least in respect of the delay which was directly due to the inaction on the part of the Electricity Board.

16. We shall now proceed to consider each one of the points urged by the petitioners;

(1)(a) : As far as the petitioner in Writ Petition No. 10554 of 1980 is concerned, as stated earlier, the commitment charges have been calculated with effect from 1-11-1974. This is on the ground that the petitioner had agreed to take supply of electric energy with effect from 1-11-1974. As stated earlier, it appears that when the petitioner applied to the Board in September, 1973, they had indicated that they are likely to take supply of electricity in November, 1974, but the actual sanction of electricity power was granted only on 30-1-1974. Thereafter, when by letter dated 25-3-1974 the petitioner was informed that the date with effect from which the petitioner had agreed to take electric supply was from November, 1974, the very next date after the receipt of the said letter, on 27-3-1974, the

petitioner stated thus :

"In our application dated 1st Sept. 1973, we had asked for power supply in the November-December, 1974. Now we will require the same not before the month of June, 1975. So please instruct the Chief Engineer concerned accordingly and oblige."

(Underlining by us)

The letter written by the petitioner at the earliest point of time after the receipt of sanction of electricity, clearly indicates that the petitioner agreed to take the supply only in June, 1975. From the above correspondence, it is clear that the petitioner was liable to pay commitment charges only from June, 1975 and not for an earlier period. The learned counsel for the Board invited our attention to the relevant clause in the agreement and also the undertaking given by the petitioner to pay commitment charges from November, 1974. It is true that in the letter dated 25-3-1974 the Board had stated that the petitioner had agreed to take electric power from November, 1974. But as stated earlier, the petitioner had made it known to the Board by return of post on 27th March, 1974 (Annexure D) that they will not require electricity earlier to June, 1975. Therefore, it would be unreasonable for the Board to call upon the petitioner to pay commitment charges from November, 1974 itself. The fact that in the agreement also November, 1974 was mentioned as the date of commencement of liability to pay commitment charges does not help the Board in the face of the letter dated 27th March, 1974 (Annexure D). In this behalf, it is necessary to point out that the Board is "State" as defined under Article 12 of the Constitution of India and is bound by the injunction contained in Article 14 which is to the effect that it shall not deny to any person equality before law and equal protection of the laws, which includes an injunction not to act arbitrarily. Even if the petitioner had agreed to pay commitment charges from November, 1974, if in law he is liable to pay commitment charges only from June, 1975, such agreement would not absolve the Board from its duty to obey the injunction of Article 14. (See: *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, and *T.G. Srinivasa Murthy, etc., etc. Vs. Bharat Earth Movers Ltd. etc., etc.*, Once we come to the conclusion that the action of the Board in demanding commitment charges from November, 1974 is arbitrary and therefore violative of Article 14 of the Constitution, even if there was an agreement signed or undertaking given by the petitioner, whether by mistake or compulsion or otherwise; the Board cannot be allowed to disobey the injunction of Article 14 of the Constitution. Therefore, as far as this petition is concerned, we hold that the demand of commitment charges up to June, 1975 is illegal and arbitrary.

(1)(b) : In the case of the petitioner in Writ Petition No. 16046 of 1980, in the first instance the petitioner had indicated that supply of power would be taken from January, 1975 and accordingly the Executive Engineer, Mysore, had informed this petitioner that it was liable to pay commitment charges from

January, 1975. But later on account of delay in getting the land and other usual problems in starting an industry, the petitioner in its letter dated 11-10-1974 (Annexure C) informed the Board that the petitioner would be in a position to take supply only some time in September, October or November, 1975. Therefore, for the reasons given in respect of the petitioner in Writ Petition No. 10544 of 1980, we hold that the petitioner of this petition is not liable to pay commitment charges for any period earlier to November, 1975.

(1)(c) : In the case of the petitioner in W.P. No. 179 of 1981, the petitioner had agreed to take supply from April, 1975. But actually the supply was taken only from 17-4-1976. As in the other two cases, there was no intimation by this petitioner to the Board about any postponement of the date of utilisation. Therefore, the petitioner was liable to pay commitment charges from April, 1975.

However, it is necessary to point out that these two petitioners had made representations to the Government in the matter and the Government asked the Board to consider their requests for waiver of commitment charges for certain periods. The letter reads :

GOVERNMENT OF KARNATAKA

No.CI 85 FM1 75. Karnataka Govt. Secretarial, Vidhana Soudha, Bangalore, Dt. 26th July, 1975. From :

The Secretary to the Govt. of Karnataka, Commerce and Industries Department.

To :

The Chairman, Karnataka Electricity Board, K. R. Circle, P.B. No. 5315, Bangalore.

Sir,

Sub : Waiver of commitment charges for power supply. I am directed to forward herewith copies of letter No. BSL/105/75 dated 24-5-1975 from the Managing Director, Brindavan Steel Ltd., Bangalore, and letter dated 26-5-1975 from the Managing Director, Shimoga Steels Ltd., Bangalore, on the above subject and to state that this Department supports the requests made therein for waiver of the commitment charges up to 31-12-1975 and 31-1-1976 respectively. I am, therefore, to request you to consider the requests favourably.

Yours faithfully, Sd/- E. Venkata Reddy, Under Secretary to Govt., Commerce and Industries Dept."

The letter though couched in the form of a request, it is really a direction u/s 78-A to consider the waiving of the commitment charges in respect of the petitioner in W.P. No. 16046 of 1980 up to 31-1-1976, that is, to collect it from 1-2-1976 and to consider the waiving of the commitment charges in respect of the petitioner in W.P. No. 179 of 1980 up to 31-12-1975 and to collect it from 1-1-1976. Therefore, it was obligatory for the Board to consider the cases of

these petitioners as directed by the Government.

(2) Now coming to the question of quantum of commitment charges, it is no doubt true that the petitioner had to pay 75% of the contracted demand. It is not, however, disputed that during the relevant period there had been power-cut in respect of high tension consumers (500 KVA and above) to which category the petitioners belong. The particulars of the power-cut during the relevant period as furnished by the Board is as below :

1-10-74 to 31-3-75

35%

1- 4-75 to 30-6-75

40%

1- 7-75 to 20-8-75

25%

21- 8-75 to 30-11-75

10%

1-12-75 to 29-2-76

25%

1- 3-76 to 30-6-1976

33 1/3%

1- 7-76 to 14-9-1976

25%

15- 9-76 to 31-12-76

40%

In view of this power-cut effected by the State Government in exercise of its powers u/s 22-B of the Act. having regard to Section 42(e) which makes disobedience of an order made u/s 22-B an offence punishable, neither the petitioner could consume any energy over and above the power-cut effected nor the Board could supply electric power to the petitioner in violation of the power-cut notification, Such being the effect of a notification u/s 22-B, it follows even if the petitioner had actually taken supply of electrically as on the date they agreed, the Board could not have supplied power in violation of the power cut notification issued u/s 22-B of the Act and the petitioner could have asked the Board to reduce the contracted demand proportionate to the power cut in which event the Board was bound to do so and the petitioner would be and liable to pay only for 75% of the contracted demand as reduced in proportion to power cut as

held by this Court in W.P. No. 6862 of 1978. DD 17-8-1979 (Andhra Steel v. K.E.B.). From this it follows the commitment charges should have been computed on the basis of 75% of the contracted demand as reduced in proportion to the power cut. Therefore, the quantification made in the impugned notices have to be reduced having due regard to the percentage of power cut, which was in force during the relevant time.

(3) The next question for consideration is about interest. Circular dated 1-3-1979 has been issued regarding interest to be collected on commitment charges. The relevant portion of the Circular reads :

"Instructions were issued in this office Circular No. T/Com-2/60A/CYS-39/76-77 dated 30-4-1976 to obtain an undertaking from the consumers to be abide to pay the commitment charges in respect of power supply sanctioned but not availed. It was particularly intimated to send the monthly H.T. bills by adding the words "without prejudice to the recovery of commitment charges". An undertaking to the above effect was also asked to be obtained on a stamped paper of Rs. 3/- value.

The Board has now communicated its final orders in respect of commitment charges and accordingly the commitment charges are to be recovered in the following manner :

(I) -- (a) Power supply availed prior to i 8-12-76 the commitment charges with interest on belated payments are to be collected up to 17-4-1976.

(b) The interest will not be recovered after 17-4-1976 till 15 days after the date of issue of notice. Each consumer coming under this category are to be served with a notice for the payment of commitment charges with immediate effect. Levy of interest charges to be done from the date of expiry of 15 days notice."

Having regard to the above Circular, the interest on commitment charges becomes payable only after 15 days after the expiry of the notice issued to each of the petitioners. In this case, a memo has been filed by the learned counsel for the respondents furnishing the dates of demand. They are :

(i) To the petitioner in W.P. No. 10544/80 the first demand to pay commitment charges was made as per the letter dated 23-7-1979;

(ii) To the petitioner in W.P. No. 16046/ 80, the demand to pay commitment charges was made as per the letter dated 30/31-3-1979.

(iii) To the petitioner in W.P. No. 179/81, the demand notice was served on 4-4-1979.

Therefore, it is clear that the interest could be computed only after the expiry of 15 days after the demand notice was served on each of the petitioners. In the impugned notices, interest has been included for the entire earlier period also. Therefore, the demand notice to that extent also is not in accordance with law. It has to be recalculated after 15 days after the service of the demand notices.

(4) The last question for consideration is the plea of the petitioners that the Board itself was responsible for the delay in the supply of electric energy and the Board should not be allowed to make profit out of the lapse of its own officers and penalise the petitioners for the default of the officers. In support of this, the petitioners rely upon the various letters written by them to the concerned officer and the delayed action or reply by the officers. As against this, it is averred by the Board that the petitioners for their own reasons were deliberately indulging in delaying tactics and were not prompt in answering queries or furnishing the prescribed drawings and other particulars and they are now blaming the officers of the Board. On the material before us it is difficult to hold that the officers of the Board alone were responsible for the delay. The petitioners had their own problems, such as, securing of land, the industrial licence and the like. Whatever that may be, it is for the Board to consider as to whether the petitioners have suffered on account of any delay on the part of the officers of the Board and to give concessions if it considers just and expedient to do so.

17. In the result, we make the following order :

I. In W.P. No. 10544 of 1980:

- (1) The writ petition is partly allowed.
- (2) The demand of commitment charges from 1-11-1974 to 31-5-1975 is set aside;
- (3) For the period commencing from 1st June, 1975 up to 27th March, 1977, the Board is directed to reduce the commitment charges after reducing the contracted demand in proportion to the percentage of power cut order made by the State Government u/s 22-B of the Indian Electricity Act, 1910.
- (4) The Board is directed to collect interest on the commitment charges so reduced after the expiry of fifteen days on which the demand notice dated 23-7-1979 was served on the petitioner.
- (5) The Board shall be at liberty to waive any portion of commitment charges payable by the petitioner if it finds that any part of the delay in the supply of electric power by the petitioner was attributable to any unjustified delay on the part of the officers of the Board.

II. In W.P. No. 16046/1980:

- (1) The writ petition is partly allowed.
- (2) The demand of commitment charges from 1-1-1975 to 31-10-1975 is set aside.
- (3) For the period commencing from 1-11-1975 to 17-4-1976, the Board is directed to reduce the commitment charges after reducing the contracted demand in proportion to the percentage of power cut order made by the State Government u/s 22-B of the Indian Electricity Act, 1910.

(4) The Board is directed to collect interest on the commitment charges so reduced after the expiry of fifteen days on which the demand notice dated 30/31-7-1979 was served on the petitioner.

(5) The Board is directed to consider as to whether commitment charges should be waived up to 31-1-1976, as directed by the Government in their letter dated 26-7-1975 (Annexure F).

(6) The Board shall be at liberty to waive any portion of commitment charges payable by the petitioner if it finds that any part of the delay in taking the supply of electric power by the petitioner was attributable to any unjustified delay on the part of the officers of the Board.

III. In W.P. No. 179/1981 :

(1) The writ petition is partly allowed,

(2) The Board is directed to reduce the commitment charges after reducing the contracted demand in proportion to the percentage of power cut order made by the State Government u/s 22-B of the Indian Electricity Act, 1910.

(3) The Board is directed to collect interest on the commitment charges so reduced after the expiry of fifteen days on which the demand notice dated 4-4-1979 was served on the petitioner.

(4) The Board is directed to consider as to whether commitment charges should be waived up to 31-12-1975 as directed by the Government in their letter dated 26-7-1975 (Annexure G).

(5) The Board shall be at liberty to waive any portion of commitment charges payable by the petitioner if it finds that any part of the delay in taking the supply of electric power by the petitioner was attributable to any unjustified delay on the part of the officers of the Board.

18. Order accordingly.