(2005) 06 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 13542 (W) of 2003

Kharibari Tea Company Limited and Another APPELLANT

Vs

West Bengal State Electricity Board and Others RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Regulatory Commission Act, 1998 — Section 22(1)
Factories Act, 1948 — Section 2
Industrial Disputes Act, 1947 — Section 2, 25A, 25C, 25D, 25E
Mines Act, 1952 — Section 2
Plantations Labour Act, 1951 — Section 1(4), 2

Citation : (2006) 1 CHN 610

Hon'ble Judges : Pratap Kr. Ray, J

Bench : Single Bench

Advocate : Mitali Bhattacharjee and Jagabandhu Roy, Pratap Kr. Chatterjee, D.N. Misra and Lopita Banerjee, for the Appellant;K.K. Dasgupta and S.S. Koley, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kr. Ray, J.—The writ application has been filed by two writ petitioners, one is the Kharibari Tea Company Limited as petitioner No. 1, a company within the meaning of the Companies Act, 1956 engaged in the business of tea plantation, manufacturing and processing of tea and by petitioner No. 2 working for gain as well as Director of said company, petitioner No. 1 in the said organisation. Relief prayed for in this writ application is to this effect:

(a) Issue writ of or in the nature of mandamus commanding the respondent Nos.1, 2 and 3 and each of them to forthwith cancel and/or quash and/or rescind and/or revoke and/or recall the impugned order as in Annexure T5'' and to treat your petitioners'' factory at Sachindra Chandra Tea Estate in the district of Darjeeling as a ''new industry'' and forthwith grant concession in accordance with Clause (a) of the TOD Tariff in the Tariff and Related Conditions of Supply as in

Annexures ''P2 to PP1'', to your petitioners at their factory at Sachindra Chandra Tea Estate in the district of Darjeeling whether as new industry or in the alternative as ''Expansion''.

(b) Issue a writ of or in the nature of prohibition prohibiting the respondents and each of them and/or the men, agents, servants, staff, employees, authorities and each of them and/or the concerned authority of the respondent No. 1 from giving effect and/or further effect to the impugned Annexure "P5" and/or any bill charging for energy without granting concession at the rate and as per Clause(a) of the TOD Tariff in the Tariff and Related Conditions of Supply as in Annexures ''P2 to PP1'' to your petitioners at their factory at Sachindra Chandra Tea Estate in Darjeeling whether as new industry or in the alternative as ''Expansion''.

(c) Issue a writ of or in the nature of Certiorari calling on the respondent Nos.1, 2, 3, 4 and 5 to remit the records of the case to this Hon''ble Court such that this Hon''ble Court may certify the same and do conscionable justice to the case inter alia by quashing the impugned annexure ''P5''.

(d) Pass appropriate direction(s)/order(s).

(e) Issue Rule Nisi in terms of prayers(a), (b), (c) and (d) above.

(f) Pass an interim order staying the operation of the impugned Annexure ''P5'' passed by the respondent No. 2 dated July 31, 2003, and further restraining the respondents and each of them and/or the men, agents, servants, staff, employees, authorities and each of them and/or the concerned authority of the respondent No. 1 from billing your petitioners for electricity consumed and/or energy charges, without giving them concession as per Clause (a) of the TOD Tariff in the Tariff and Related Conditions of Supply as in Annexures ''P2 to PP1'', to your petitioners at their factory at Sachindra Chandra Tea Estate in the district of Darjeeling whether as new industry or in the alternative as ''Expansion'', till the disposal of the Rule and/or this application.

(g) An order be passed granting the requisite concession in tariff (energy charge) to the petitioners'' said tea processing/manufacturing unit at Kharibari at the rate of 25% on total energy charges for a period of three years and, thereafter, at the rate of 15%, 10% and 5% on the total energy charges during the 4th, 5th and 6th year with effect from August 8,2001 and the same be adjusted and/or given benefits thereof in future electricity consumption bills in accordance with the Tariff and Related Condition approved by the West Bengal Electricity Regulatory Commission.

(h) Pass ad interim order(s) in terms of prayer (f) above.

(i) Pass such other and/or further order(s)/direction(s) as may seem fit and proper.

2. The impugned order in this writ application is annexed at page 134 being Annexure "P5" of the writ application whereby and whereunder Chief Engineer

(Commercial). West Bengal State Electricity Board passed a decision rejecting the prayer praying concession in the electricity charges as admissible to the new HT Industries in terms of the tariff schedule of the Board fixed by the Regulatory Commission by holding inter alia, that petitioner No. 1, the company was an existing one and was not a new industry on considering the initial application of petitioner No. I praying supply of power for the purpose of expansion of their existing unit and also prayer of extension of concession on additional consumption arising out of expansion on the ground that the petitioner No. I failed to satisfy the condition precedent for grant of such concession on additional consumption by producing monthly generation figure of the diesel generating set prior to expansion of their unit. The impugned decision reads to this effect:

West Bengal State Electricity Board Order Sheet Re: AST No. 402 of 2003 Kharibari Tea Company Ltd. and Anr. v. W. B. S. E. Board and Ors.

The Kharibari Tea Company Limited made an application to the Hon''ble High Court at Calcutta under Article 226 of the Constitution of India praying for direction to West Bengal State Electricity Board to allow concession in the energy charge as admissible in terms of the Tariff Schedule of the Board. Hon''ble Justice Arun Kumar Mitra after hearing the ld. Advocate of both the parties directed the Chief Engineer (Commercial), Central Commercial Wing, West Bengal State Electricity Board, to consider this writ petition as a representation and dispose of the same in accordance with the law within six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioners. Accordingly, the representatives of the Company were requested to attend the Central Commercial Department, West Bengal State Electricity Board on 7th July, 2003 at 3 p.m. The representatives of the Company expressed their inability to appear before the hearing as per schedule and requested for fixation of the date of hearing on 9th July, 2003. Accordingly, Amit Agarwal and Rajesh Singhania, representatives of the company were heard on 9th July, 2003.

The management of Sachindra Chandra Tea Estate was taken over by the Kharibari Tea Company Limited in March, 2001. As per the statement of the Kharibari Tea Company the said tea estate was not functioning for the period from 1991 to 2001 and there was no factory associated with tea estate earlier. In March, 2001 the Kharibari Tea Company Limited made an application to the Board for supply of power. On scrutiny of the said application and letter dated 8.5.2002 of consumer it was revealed that the application for supply of power was for the purpose of expansion of their unit.

As per application submitted by the Kharibari Tea Comp my Limited, West Bengal State Electricity Board provided electricity connection to the tea estate on 30.8.2001.

The Kharibari Tea Company Limited subsequently enclosing a copy of the registration certificate issued by the Director of Industries, Govt. of West Bengal, approached the local billing unit of West Bengal State Electricity Board for extension of concession in the electricity charges as admissible to new HT industries in terms of Tariff Schedule of the Board.

The petitioner argued that since they have taken supply for the first time from West Bengal State Electricity Board, they should be treated as new industry for the purpose of extension of concession in the energy charge as admissible in the Tariff Schedule of the Board.

The Superintending Engineer, Darjeeling (Distribution) Circle, West Bengal State Electricity Board subsequently visited the factory premises of the Kharibari Tea Company Limited and then made a reference to the West Bengal Industrial Development Corporation Ltd, for confirmation as to whether it was a new industry or an expanded industry.

West Bengal Industrial Development Corporation Ltd. vide letter dated 11.10.2002 (annexed herewith and marked "A") intimated the Superintending Engineer, Darjeeling (Distribution) Circle, W.B.S.E.B. that it was an expanded unit of Sachindra Chandra Tea Estate according to West Bengal Incentive Scheme, 2000. Thus, it was revealed from the record that (i) it was an expanded unit in terms of the application made by the Kharibari Tea Company Limited for supply of power, (ii) it was an expanded unit in terms of the confirmation received from West Bengal Industrial Development Corporation Ltd. As such, the unit of the Kharibari Tea Company Limited cannot be considered as the new industry for the purpose of giving concession in the energy charge in terms of Tariff Schedule of the Board. It is further relevant to mention here that W.B.S.E.B. also extends concession in the energy charge on additional consumption arising out of expansion to the existing industrial unit provided the consumption is 25% more than the base consumption. Thus, it was examined as to whether concession can be allowed to the Kharibari Tea Company Limited as expanding unit.

For extension of concession on additional consumption arising out of expansion the level of consumption prior to the expansion is to be known precisely. The representatives of W.B.S.E.B. who participated in the hearing mentioned that the Kharibari Tea Company Limited had a few tin sheds (as revealed during inspection of the factory premises) with sal wood structure and withering machine which was being run by 18 KVA diesel generator. During hearing it was enquired from the representatives of the Kharibari Tea Company Limited as to whether they can produce monthly generation figure of the diesel generating set prior to expansion of their unit. But the representatives of the Kharibari Tea Company Limited expressed their inability to submit those details. Under the circumstances it is also very difficult to assess the base consumption over which concession in the energy charge can be extended to the company as expanded unit.

In view of what has been explained above the Kharibari Tea Company Limited is not eligible to get concession in the energy charge either as a new industry or as a expanding unit.

(S. C. Bhattacharyya) Chief Engineer (Commercial).

3. The admitted facts of the writ application are to this effect:

(1) Sachindra Chandra Tea Estate was an existing old tea garden under the Kharibari Tea Company Limited situated at Kharibari, District : Darjeeling which was engaged only to grow tea leaves but there was no manufacturing and/ or processing units for the purpose of converting the green tea leaves to marketable tea as finished product prior to sale by resorting manufacturing process with the help of machines, but only one 18 KVA generator was set up to operate fans as were being used to dry tea leaves and there was no electrical supply line neither in the factory nor in the quarters of the employees/workers engaged therein.

(2) Members of a ''Mitra'' family hereinafter termed as ''Mitras'' while acting as Directors of the company, major shareholders filed a suit in the Court of the learned District Judge, Jalpaiguri being O.C. Suit No. 139 of 1993 praying perpetual injunction restraining said ''Mitras'' from acting as Directors of the company and for other consequential reliefs. By a judgment and decree dated 24th May, 1995 said suit was decreed by granting permanent injunction restraining ''Mitras'' from acting as Directors of the company and by appointing an Administrator for holding General Meeting of the company for the purpose of electing Board of Directors of the company. Assailing that judgment and decree, an appeal was preferred in the High Court at Calcutta, which was disposed of along with C.A.N. No. 4286 of 2002 in connection with F.A.T. No. 1905 of 1995, C.A.N. No. 4286 of 2002 in connection with F.A.T. No,1904 of 1995 and C.O.T. No. 1929 of 1996 with F.A.T. No. 1832 of 1999 by the judgment and order dated 17th July, 2002. The appeal and all applications were disposed of by the Division Bench (Coram: A Chakraborty and R. N. Sinha, JJ.) by the following order:

As none of the parties to the proceeding has raised any objection nor any affidavit has been filed contradicting the statement made in the application, it appears to us that the earlier shareholders have no more interest to contest the present application and they have no interest in the company also as they have sold the shares to the present management.

In view of the finding, the present appeal is disposed of and the accounts of Kharibari Tea Company Limited prepared for the period from April 1,1991 to March 31, 2001 in terms of the order of this Court and duly adopted at the Annual General Meeting of the company on 28th April, 2001, be treated as final and the period between April 11,1991 and 30th April, 2000 be treated as closure for the purpose of subject-matter in this appeal.

The appeal and the application are disposed of.

(3) By the order dated 15th December, 2000, the said Hon''ble Division Bench aforesaid appointed an Administrator, who thereafter, however, handed over the present management of the petitioner No. l to the petitioner No. 2 and the other

directors.

(4) The present management of the petitioner No. l after getting the tea garden of Sachindra Chandra Tea Estate for its management intended to set up tea processing/manufacturing unit in addition to the plantation work as was existing earlier and for that purpose applied for a new connection of electricity supply line to the West Bengal State Electricity Board.

(5) That an application dated 8th May, 2002 was filed by one S. M. Rungta, Director of petitioner No. l as addressed to the Superintending Engineer, Darjeeling (DT) Circle of West Bengal State Electricity Board praying for concession of energy charge in terms of West Bengal Incentive Scheme, 2000 by contending, inter alia, that the erstwhile unit, which was only engaged with harvesting now has switched over to harvesting cum manufacturing/processing unit by expansion of the unit. The letter dated 8th May, 2002 of Kharibari Tea Company Limited as annexed in the affidavit-in-opposition affirmed by one Madhusudan Pal, Superintending Engineer, Darjeeling (DT) Circle on behalf of respondent No. l, the West Bengal State Electricity Board as well as letter dated 7th March, 2001 of petitioner No. l addressed to the Divisional Engineer, West Bengal State Electricity Board read to this effect:

To Dated: 8th May, 2002 The Superintending Engineer Darjeeling (Dist.) Circle West Bengal State Electricity Board 2nd Mile, Sevoke Road, Siliguri. Dear Sir, Sub: Eligibility of Concession on Energy Charge. We are in receipt of your letter No. SE/DDC/B-318/334 dt.6.5.2002 in reply to our letter dated 11.4.2002 and have noted the contents therein. We have applied for granting us concession on energy charges under West Bengal Incentive Scheme, 2000 and not under Incentive Scheme, 1993 as the carrying out of expansion work in our Sachindra Chandra Tea Estate Factory has taken place only during the year 2001.

In terms of the West Bengal Incentive Scheme, 2000, every industry which goes for expansion is entitled to claim for concession on energy charges and that has been permitted as per this Incentive Scheme. We, as such, have applied for concession exactly in terms of the West Bengal Incentive Scheme, 2000.

The total expansion of the factory has taken place during the year 2001 and a new power connection which was never in existence at that tea estate, has been provided but your good office only during the year 2001. The factory which you have mentioned in your abovequoted letter was a very small factory in a very bad and ugly situation, not capable of undertaking manufacturing of teas there and this expansion which we have done by completing the extensive construction work and installation of machineries to give a shape of new tea factory and thus making the scheme for producing much higher quantity of teas than it was producing prior to this expansion. Moreover, we are enclosing herewith a xerox copy of Eligibility Certificate No. INC(2000)/EC-11C dt. 15.10.2001 issued by West Bengal Industrial Development Corporation vide their letter No. INC-2000(2) General/3639 dated 15/17.10.2001.

We as such request you to please consider this matter in its reality and allow us the concession on energy charges in terms of the West Bengal Incentive Scheme, 2000.

Yours faithfully For The Kharibari Tea Co. Ltd. (S.M. Rungta) Director.

To Dated- 7th May, 2001. The Divisional Engineer West Bengal State Electricity Board Himalayan (0 & M) Circle Sevoke Road, Siliguri. Dear Sir, Sub: Bulk Supply for our existing tea manufacturing factory at our Sachindra Chandra Tea Estate. P.O. Kharibari. Dist: Darjeeling

Enclosed herewith please find an application for supply of power of our tea manufacturing factory with producing capacity of 3 lacs kgs of tea per annum, situation at our Sachindra Chandra Tea Estate, P, O. Kharibari, Dist. Darjeeling.

Please note that the factory is already in existence and is at present running on the engine with shaft driving arrangements which cause much difficulty in keeping the unit in operation. The factory is already in existence and is manufacturing tea from the green leaf harvested at our own garden namely Sachindra Chandra Tea Estate and the factory is already having all the required documents in its possession. We undertake to observe all the formalities with the Electricity Board whatsoever is required for obtaining the required power supply from your good office. The requirement of power for our this factory will be as follows:

1st year 125 KVA 2nd year 125 KVA 3rd year 125 KVA 4th year 125 KVA 5th year 125 KVA Kindly accord sanction so as to enable us in proceeding with changing the driving arrangement immediately.

Thanking you, Yours faithfully, For Kharibari Tea Co. Ltd. Director. 01. ... 13. Maximum Demand 1st year 125 KVA 2nd year 125 KVA 3rd year 125 KVA 4th year 125 KVA 5th year 125 KVA 14. Proposed working hours Summer 24 Hrs. and loan maintained Winter 12 Hrs. 15. Area of Land Acquired Factory already in existence on the leasehold land granted in favour of the Company for the purpose of growing and manufacturing tea. 16. State of construction Already in existence and in running condition. 17. Probable date when Installation of Panel Boards etc. will be installation will be ready ready within a month''s time. to receive power supply 18. Quantity of power No. required, if any, during construction period Kharibari Tea Co. Ltd. Director Date: 05 March, 2001 Signature of the applicant with seal   of the firm.

(6) u/s 22(1) of the Electricity Regulatory Commission Act, 1998, West Bengal Regulatory Commission approved vide order dated 7th December, 2001. the tariff and relating conditions for different categories of consumers for the year 2000-01 and 2001-02 wherein there provision was made to provide concession for new industries, expanded industries and sick industries, which read to this effect:

(a) Concession for New Industries:

All new HT and EHT industries connected on and after 26th January, 1999 will be eligible for a concession in the tariff (energy charge) based on consumption on the following pattern with effect from the date permanent connection is effect for a period of 6(six) years.

All such industrial consumers drawing power at 66/132/220 KV will be given a concession of 40% on the total energy charge for first three years. The concession shall however be 25%, 20% and 15% on the total energy charge during 4th, 5th and 6th year.

All such new HT industrial consumers drawing power at 33 KV will be given concession of 30% on the total energy charge for first three years. The concession shall however be 20%, 15% and 10% on the total energy charge during 4th, 5th and 6th year.

All such new HT industrial consumers drawing power at 6/6. 6/11 KV will be given concession of 25% on the total energy charge for first three years. The concession shall however be 15%, 10% and 5% on the total energy charge during 4th, 5th and 6th year.

There will be no concession in the demand charge or in the fuel and power purchase cost adjustment charge.

Concession for new connection being enjoyed by the HV and EHV industries connected on 1.3,95 and onwards but upto 15.1.99 shall however be discontinued after 3 years from the respective date of permanent connection.

An additional rebate of 3.5% in the energy charge will be given to new HT and EHT industries in the districts of Jalpaiguir, Coochbehar, Darjeeling, North Dinajpur, South Dinajpur, Malda, Bankura ana Purulia.

(b) Concession for expansion of existing industries:

The above concession for six years (excluding additional rebate of 2.5%) can be availed of by new and existing HT and EHT industrial unit expanding for additional production on or after 26th January, 1999 (as defined in the West Bengal Industrial Incentive Scheme, 1993) only to the extent of additional consumption provided such expansion is certified by the West Bengal Industrial Development Corporation and there should be minimum increase of 25% over previous average monthly consumption of energy in any consecutive 12 months period during the preceding three years.

To avail of this concession, the concerned industry will have to install a TOD meter of metering and billing of consumptions.

Concessional tariff will be applicable to eligible industries for six years with effect from the date of commissioning of the expanded facilities which is to be certified by WBIDC or the Director of Cottage and Small Scale Industries, West Bengal, as the case may be, or the date of installation of TOD meter whichever is later.

(c) Concessions for Sick/Rehabilitated Sick Industries :

All concession for the first three years (excluding additional rebate of 2.5%) applicable for new industries will be available for the running HT/EHT Sick/Closed Industries that are covered under rehabilitation package approved by BIFR/IDBI/ SIDBIS/Financing Nationalized Bank depending on whether it is a large/medium or SSI Unit.

In case, any such consumer is defaulter in payment of Energy Bill and has an accumulated outstanding dues, concessional tariff can also be allowed to them provided they pay 25% of their dues including LPSC outright and undertake to pay the balance dues in maximum 10(ten) monthly instalments along with LPSC accrued further.

To avail of this concession, the concerned industry will have to install a TOD meter for metering and billing of consumption.

Concessional tariff shall be made available to eligible running Sick/Closed Industrial Units from the date of approval of the revival packages (to be certified by the WBIDC or the Director, C&SSI as the case may be) or the date of installation of TOD meter whichever is later irrespective of date of submission of application. If the sick industry is in the state of disconnection, the date of availing of concessional tariff will be the date of reconnection or the date of installation of TOD meter whichever is later.

Concession to the eligible sick industries shall continue for a period of 3(three) years or upto the date of expiry of the approved revival packages (BIFR/ SIDBIS/ Financing Nationalized Bank whichever is earlier).

(d) Other stipulations:

Present restrictions on the drawal of power during peak house will be lifted as and when TOD meters are installed and made operative in the case of existing industries, who opt for TOD system of metering and billing.

Those who will opt for TOD meter, will have to make an advance payment of Rs. 30,000/- (Rupees thirty thousand) only to the Board towards cost of TOD meter and the said advance would be refunded through electricity bills in 10(ten) equal monthly instalments.

The monthly meter rent payable by the consumer opting for TOD meter would be Rs. 1,200.00 (Rupees one thousand two hundred)only. However, till such time the advance is fully adjusted only 75% of the monthly meter rent applicable for TOD meter i.e., Rs.900.00(Rupees nine hundred) only will be recovered. The monthly meter rent would be revised from time to time as and when required.

If the industries eligible for concession in the energy charge in terms of Clauses (a), (b) and (c) mentioned hereinbefore, default in payment of electricity bills within due date of payment during the availability period of concession, they will lose concession in the energy charge for that particular billing period only.

Those industrial units who apply for and avail of subsidy on purchase and installation of captive generating sets as per W. B. Incentive Scheme, 1991, will not be eligible for these concessions.

To avail of concessions in the energy charge, the industries will have to furnish a certificate from the WBIDC to the effect that they have not applied or availed of subsidy on purchase and installation of captive power generating sets as per W.B. Incentive Scheme, 1993. However, for SSI units which do not come under the purview of WBIDC, shall have to submit the certificate from the Director, Cottage & Small Scale Industries, Govt. of West Bengal, for this purpose. Industries which received subsidy on captive generation set for the original unit but have not availed of the same for the expanded unit are also eligible for concession in the energy charge for the increased consumption due to expansions subject to fulfilment of associated stipulations.

Power Factor Rebate/Surcharge (for industrial consumers only):

Rebate: @ 0.5% on the energy charge for every 1% increase in the P.F. above 92% subject to a ceiling of 2%

Surcharge: @0.5% on the energy charge for every 1% fall in the P.P. below 85% subject to a ceiling of 2.5%.

(7) The petitioners claimed concession of energy charge on the ground that they had set up a new industry and in support of said claim submitted the document "West Bengal Incentive Scheme, 2000", issued by Directorate of Industries, Government of West Bengal as well as the letter dated 11th October, 2002 issued by Deputy Manager (Incentive) of West Bengal Industrial Development Corporation Ltd. The said letter of 11th October, 2002 reads to this effect:

By Hand West Bengal Industrial Development Corporation Ltd. (A Government of West Bengal Undertaking) 5, Council House Street, Calcutta - 700 001.

INC-2001 (19) General 74296 11th October, 2002 To The Superintending Engineer Darjeeling Distribution Circle West Bengal State Electricity Board 2nd Mile, Sevoke Road, P.O. Siliguri Dist. Darjeeling. Sub; Kharibari Tea Co. Ltd. (Sachindra T. E.) Dear Sir, This refers to the letter No. SE/DDC/B-318 Dated.5.10.02 from S.E.DDC re M/s. Kharibari Tea Co. Ltd.

Actually in the West Bengal Incentive Scheme, 2002 for any company which has/ had a running factory at any point of time in West Bengal, on establishment of a new unit, the new unit is termed ''expansion''. Therefore the term expansion in case of Sachindra Tea Estate, is according to the above West Bengal Incentive Scheme, 2000.

The above tea garden was lying closed for a few years and facilities became defunct and unserviceable.

The present owners viz. Kharibari Tea Co. Ltd. took over the tea garden and refurbished it in totality.

Thus only because of the vagaries of West Bengal Incentive Scheme, 2002 the word expansion is used. For all practical purposes, including those of power rebate and electricity duty, the full unit is to be considered as a new industry.

We believe this will answer your queries.

Thanking you, Yours faithfully, (J. Majumdar) Dy. Manager (Incentive). (8) Since the matter was kept pending by the West Bengal State Electricity Board, the writ petitioners moved a writ application being A.S.T. No. 402(W) of 2003, which was disposed of by the order dated 2nd June, 2003 by A. K, Mitra, J. directing the respondent No. 2, Chief Engineer (Commercial), Central Commercial Wing, West Bengal State Electricity Board to consider the writ application as a representation and to dispose of the same in accordance with law by passing a reasoned order. In the said writ application, petitioner took the identical point as raised in this writ application, namely, their claim as a new unit for being eligible to have concession of tariff of electricity. Petitioners were heard and reasoned decision was communicated, which is the impugned decision of this writ application as already quoted earlier in earlier paragraph.

4. This writ application has been opposed by the respondents, the West Bengal State Electricity Board, who in their affidavit-in-opposition has contended, inter alia, that impugned decision was legal and valid. It has been contended further that as the petitioners themselves applied for connection of electric supply line for their expanded unit, namely, the unit as set up for processing/manufacturing of the tea from the tea leafs by categorically contending that existing unit was expanded, such supply of electricity cannot be said as a supply to a new industry in terms of the parameters of concession in electricity tariff as approved by the Electricity Regulatory Commission.

5. From the impugned decision, it appears that the prayer for concession was rejected as the unit was not a new industry but an existing unit, which was expanded on installing machines for the purpose of processing/ manufacturing of tea from the green tea leafs along with the plantation works as was already existing. It has been further contended that the petitioners even were not entitled to enjoy concession of tariff for expansion of existing industry as the petitioners failed to satisfy that the minimum increase of energy consumption was 25 per cent over previous average monthly consumption of energy in any consecutive 12 months period during the proceeding 3 years, which was a condition precedent for applicability of "tariff concession for expansion of existing industries".

6. Learned Advocate for the petitioner has strenuously argued that Rharibari Tea Company Limited while was under the management of erstwhile Mitras'' as Directors, had no machineries for manufacturing and/or processing of the tea from the green leafs but was only engaged with harvesting of tea leafs by plantation methods. After the management was handed over to the present management, processing/manufacturing unit was set up, which requires 11 KVA

electrical energy to run processing/manufacturing unit, which could be termed as a "new industry" to avail the concessional tariff in terms of tariff schedule approved by Electricity Regulatory Commission. Having regard to such, it is contended that impugned decision is arbitrary and illegal whereby the tariff concession as prayed for on tariff of electricity was rejected by holding this unit as an extended unit of old one.

7. It has been further contended that the West Bengal Industrial Development Corporation Limited as per their "Incentive Scheme, 2002" since had opined that it was a new unit though termed as expansion and thereby it became eligible for concessional tariff from the West Bengal State Electricity Board, non-consideration of the same by the respondent West Bengal State Electricity Board was highly arbitrary and illegal. It is further contended that even if argumendo it is accepted that it is not a new unit but expansion of old unit, still then, petitioners were eligible to enjoy the concession in tariff for additional increase of power consumption and the same has been rejected illegally without taking care of the fact that it was not possible for the petitioners to satisfy the condition of 25 per cent increase of power consumption by producing the records of consecutive last 3 years electrical consumption, as admittedly there was no electrical connection when the petitioner No. 1 was under the management of the erstwhile Directors, as at that time petitioner No. 1 was only engaged with harvesting of green tea leafs and processing of same by using the electrical fans only to dry the green tea leafs on operating those fans by the electrical energy privately generated by a generator.

8. Learned Advocate for the respondents, however, has contended, inter alia, that the letter of West Bengal Industrial Development Corporation cannot be the basis of considering the unit as a new unit as in the application itself as filed by the petitioner No. 1 praying supply of electricity, it was categorically contended that old existing unit, which was earlier engaged only for harvesting of the green tea leafs was expanded by setting up machineries to process/ manufacture the marketable tea. It has been contended vehemently that since the petitioner themselves have admitted the factual position of expansion of their unit and petitioners never urged that it was a new unit and/or never urged that it was a sick/rehabilitated sick industry and/or close industrial units in terms of the eligibility Clause of concession of tariff under Clause(c) of the tariff concession scheme by satisfying the sick industry''s concept and the parameters as stated therein, the petitioners are not legally entitled to enjoy any concessional rate of tariff as fixed by the Electricity Regulatory Commission and the impugned decision cannot be said as arbitrary or illegal. It has been further contended that the petitioner No. l although was an existing industrial unit in view of his old activity of harvesting the green tea leafs and after change of management, if it is assumed that a processing/manufacturing unit was set up, which as best could be termed as ''expansion of the old industrial unit."

9. Learned Advocate for the respondent has placed reliance to the judgment of

the Apex Court to contend that even the harvesting of green tea leafs following the plantation method by engaging the workers therein, is nothing but an industrial activity and the petitioner No. 1 although was/is an industrial unit. Reliance has been placed to the judgment passed in the case of Harinagar Cane Farm and Others Vs. State of Bihar and Others, , a judgment of three Judges Bench of Apex Court. Relying upon the said judgment, it has been contended that the petitioner No. l was an existing industry before the management was taken over by the petitioner No. 2 and any addition of unit either for processing and/or manufacturing of the marketable tea from the green tea leafs would be considered only as an expansion of existing industrial unit, which was earlier engaged only in harvesting green tea leafs. Learned Advocate for the respondents, accordingly, submits that impugned decision cannot be said as a decision fit for judicial review, as there was no illegality/arbitrariness in decision-making process. It has been further contended that to avail concession on additional consumption as alleged, the parameters of eligibility of such concessional tariff approved by the Electricity Regulatory Commission was not fulfilled, namely, the production of the records of consumption of electricity for the last 3 years to satisfy that there was increase of 25 per cent of consumption of energy when it was an admitted fact that earlier there was no supply of electricity for the existing industrial unit.

10. Having regard to the rival contention of the parties, the only point for consideration in this writ is whether the impugned decision can be interfered with by considering the norms and factors of judicial review as settled by law.

It is a settled law that an administrative decision could be interfered with by judicial review when such decision is illegal, arbitrary, irrational and violative of any statutory provision in the decision making process.

11. On scanning the impugned decision it appears that the application dated 7th March, 2001 and 8th May, 2002, wherein petitioners categorically contended that they expanded the existing unit by setting up manufacturing/processing unit, was relied upon by concerned Board.

12. On bare reading of the concessional tariff as approved by the West Bengal Electricity Regulatory Commission for the concerned assessment years it appears that for applicability of Clause(a) under the heading "concession for new industries" the unit must be a new industry.

13. In the application praying electrical supply line, the petitioners categorically contended that electrical energy would be required for ''expanded unit''. The letter dated 7th March, 2001 reads as follows:

To The Divisional Engineer West Bengal State Electricity Board Himalayan (O & M) Circle Sevoke Road, Siliguri. Dear Sir, Sub: Bulk supply for our existing tea manufacturing factory at our Sachindra Chandra Tea Estate, P.O. Kharibari. Dist: Darjeeling

Enclosed herewith please find an application for supply of power of our tea manufacturing factory with producing capacity of 3 lacs kgs. of tea per annum, situation at our Sachindra Chandra Tea Estate, P. O. Kharibari, Dist. Darjeeling.

Please note that the factory is already in existence and is at present running on the engine with Shaft driving arrangements which cause much difficulty in keeping the unit in operation. The factory is already in existence and is manufacturing tea from the green leaf harvested at our own garden namely Sachindra Chandra Tea Estate and the factory is already having all the required documents in its possession. We undertake to observe all the formalities with the Electricity Board whatsoever is required for obtaining the required power supply from your good office. The requirement of power for our this factory will be as follows:

1st year 125 KVA 2nd year 125 KVA 3rd year 125 KVA 4th year 125 KVA 5th year 125 KVA

Kindly accord sanction so as to enable us in proceeding with changing the driving arrangement immediately.

Thanking you, Yours faithfully, For Kharibari Tea Co. Ltd. Director. (Underline was made by the petitioner himself in the letter) 01.................... 13. Maximum demand 1st year 125 KVA 2nd year 125 KVA 3rd year 125 KVA 4th year 125 KVA 5th year 125 KVA 14. Proposed Working Hours Summer 24 Hrs. and Load Maintained Winter 12 Hrs. 15. Area of Land Acquired Factory already in existence on the leasehold land granted in favour of the Company for the purpose of growing and manufacturing tea. 16. State of construction Already in existence and in running condition. 17. Probable date when Installation of panel boards etc. will installation will be ready be ready within a month''s time. to receive power supply 18. Quantity of power No. required, if any, during construction period Kharibari Tea Co. Ltd. Director Date: 05 March, 2001 Signature of the Applicant with seal of the firm.

14. In the paragraph 2 of the said letter it was contended that factory existed and was being operated with shaft driving arrangements but due to the difficulty of keeping the unit in operation, the petitioner No. 1 wanted bulk supply of electricity. It was contended therein that factory was already in existence and was manufacturing tea from the green leafs by harvesting at their own garden, namely, Sachindra Chandra Tea Estate. In this letter, the requirement of power as sought for was 125 KVA. The said letter is already quoted but the relevant portions is requoted again for effective adjudication, which reads thus:

Please note that the factory is already in existence and is at present running on the engine with shaft driving arrangements which cause much difficulty in keeping the unit in operation. The factory is already in existence and is manufacturing tea from the green leaf harvesting at our own garden namely Sachindra Chandra Tea Estate and the factory is already having all the required documents in its possession. We undertake to observe all the formalities with the

Electricity Board whatsoever is required for obtaining the required power supply from your good office. The requirement of power for our this factory will be as follows:

1st year 125 KVA 2nd year 125 KVA 3rd year 125 KVA 4th year 125 KVA 5th year 125 KVA

15. By letter dated 8th May, 2002, petitioner No. 1 admitted that it was an existing industry and due to expansion of unit they claimed concession of energy tariff. In paragraph 1 of the said letter dated 8th May, 2002, it has been contended as follows "as the carrying out of expansion work in our Sachindra Chandra Tea Estate Factory has taken place only during the year 2001". Thereafter in paragraph 2 it was contended: "every industry which goes for expansion is entitled to claim for concession on energy charges". In the paragraph 3 of the letter it is contended to this effect: "The total expansion of the factory has taken place during the year 2001 and a new power connection which was never in existence at that tea estate has been provided by your good office only during the year 2001. The factory which you have mentioned in your abovequoted letter was a very small factory in a very bad and ugly situation, now capable of undertaking manufacturing of teas there and hit expansion which we have done by completing the extensive construction work and installation of machineries to give a shape of new tea factory and thus making the scheme for producing much higher quantity of teas than it was producing prior to this expansion. Moreover we are enclosing herewith a xerox copy of Eligibility Certificate No. INC (2000)/EC-11(C) dt.15.10.2001 issued by West Bengal Industrial Development Corporation vide their letter No. INC 2000(2) General/ 3639 dated 15/17.10.2001".

16. From the very contention of the letter dated 5th March, 2001 it speaks that already tea processing and manufacturing was going on by running engine with shaft and from the letter dated 8th May, 2002 it appears that factory was expanded in the year 2001. Hence, it was a clear case of expansion of the existing unit. The petitioner themselves admitted that it was a case of expansion of old industrial unit. Furthermore, from the aforesaid judgment of the Apex Court Harinagar Cane Farm (supra) as the harvesting of green tea leafs was already in vogue at Sachindra Chandra Tea Estate being the tea garden of the petitioner No. l, the same was an existing industry from the very beginning and setting up of processing and/or manufacturing units even by the subsequent Management cannot be said as setting up of a new industry to avail the concessional tariff of electrical energy.

17. It is true that under the Electricity Act and/or the tariff regulation the meaning of word "industry" has not been defined. Hence, meaning of the word "industry" to be considered from the Industrial Disputes Act, 1947 as well as from the Plantations Labour Act, 1951. Section 1(4)(a) and Sections 2(f) and 2(k) of Plantations Labour Act have provided the applicability of the said Act in respect of the labourers engaged in the plantation work of growing tea, coffee

etc. The relevant provisions read to this effect:

1.(4)(a) to any land used or intended to be used for growing tea, coffee, rubber [cinchona or cardamom] which admeasures [5 hectares] or more, and in which [fifteen] or more persons are employed or were employed on any day of the proceeding twelve months;

2.(f) ''plantation'' means any plantation to which this Act, whether wholly or in part, applied and includes offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948, apply;

2.(k) ''worker'' means a person employed in a plantation for hire or reward, whether directly or through any agency to do any work, skilled, unskilled manual or electrical, but does not include--

(i) a medical officer employed in the plantation;

(ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed [rupees seven hundred and fifty];

(iii) any person employed in the plantation primarily in a managerial capacity, notwithstanding that his monthly wages do not exceed rupees three hundred; or

(iv) any person temporarily employed in the plantation in any work relating to the construction development or maintenance of buildings, roads, bridges, drains or canals.

18. In Section 25A of the Industrial Disputes Act under the column ''explanation'', industrial establishment has been meant for said section as well as Sections 25C, 25D and 25E as a plantation as defined in Clause(f) of Section 2 of the Plantations Labour Act, 1951. Section 25A of the Industrial Disputes Act reads to this effect:

25A. Application of Sections 25C to 25E.--(1) Sections 25C to 25E inclusive [shall not apply to industrial establishments to which Chapter V-B applies, or]--

(a) to industrial establishments in which more than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

[Explanation.--In this section and in Sections 25C 25D and 25E, ''industrial establishment'' means-

(i) a factory as defined in Clause(m) of Section 2 of the Factories Act, 1948(63 of 1948); or

(ii) a ''mine'' as defined in Clause (j) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a ''plantation'' as defined in Clause(f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951).]

19. u/s 2(j) of Industrial Disputes Act, the plantation as defined in said Plantations Labour Act, 1951, also has been declared as industry.

20. The aforesaid provisions have been considered by the Apex Court in the judgment Harinagar Cane Farm (supra) and now it is a settled law that tea plantation unit engaged solely in harvesting of green tea leafs is also an industry.

21. Having regard to such concept, the Division Bench by the order dated 17th July, 2002 passed in F.A.T. No. 1905 of 1995 with F.A.T. No. 1904 of 1995 and F.A.T. No. 1832 of 1999, held that the period between April, 1991 and 30th April, 2000 would be treated as ''closure''. The petitioners have relied upon the said judgments of the Division Bench. The petitioners nowhere has contended that the Sachindra Chandra Tea Estate under petitioner No. l never was an existing industry while it was engaged only in harvesting of green tea leafs. Since it is an admitted position that Sachindra Chandra Tea Estate under petitioner No. l was an industry due to the work of harvesting of green tea leafs and since it is an admitted position from the aforesaid two letters dated 7th March, 2001 and 8th May, 2002 submitted by the writ petitioners, which are annexed in the opposition of the respondent Board, while applying for the new electrical connection by admitting that they expanded the old industrial unit, the petitioners could not satisfy the parameters to grant concession on tariff for new industries so far as energy tariff as approved by the Electricity Regulatory Commission. In that view of the matter, the finding of concerned authority in the impugned decision cannot be said as arbitrary, illegal or irrational and thereby rejection of prayer to allow the concession of electrical energy charge i.e. tariff by not holding the same as new industrial unit. The said decision making process was lawful and justified in view of the settled law and the admission of the parties that they have expanded the old industrial unit.

22. So far as extension of concession on additional consumption under Clause (b) of the Tariff Regulation, in the decision impugned, a ground has been taken that the petitioner could not satisfy the parameters of granting such concession, namely, increase of 25 per cent over previous average monthly consumption of energy in any consecutive 12 months period during the preceding 3 years to avail the concession of tariff due to expansion of existing industries, which is a condition precedent to grant such concession. The relevant para of scheme reads to this effect:

only to extend of additional consumption provided such expansion is certified by the West Bengal Industrial Development Corporation and there should be minimum increase of 25 per cent over previous average monthly consumption of energy in any consecutive 12 months period during the preceding 3 years.

23. Admittedly, the petitioners could not fulfil such condition by showing the increase of 25 per cent over previous average monthly consumption of energy in any consecutive 12 months period during the preceding 3 years as it is an admitted fact that earlier there was no electrical supply line in the existing industrial unit of petitioner No. l while it was engaged with harvesting of green leaves and selling of such green leaves. Hence, the petitioners could not even satisfy the Clause (b) of Tariff Regulation relating to concession for expansion of existing industries.

24. In the impugned decision, this point has been considered by the concerned authority while rejecting the prayer for concession under heading "additional consumption". The word "additional consumption" pre-supposes that there was earlier consumption and there was an increase of such consumption. When it is an admitted fact that there was no electrical supply line in the existing industrial unit of petitioner No. l while was engaged for harvesting the green leaves as the unit was being operated by a generator, there was no satisfaction of the meaning of the word "additional consumption" and accordingly the concerned Clause of concession is not attracted. The petitioners never was the consumer of electricity and accordingly there is no question of additional consumption due to setting up of processing and manufacturing units de novo by installing the new machines.

25. In that view of the matter and having regard to the findings and observations above, this Court is not finding any merit in the writ application. The impugned decision cannot be said as arbitrary, illegal, irrational and/or disproportionate to face the wrath of judicial review under Article 226 of the Constitution of India.

26. Writ application accordingly stands dismissed with a cost of Rs.10,000/-to be paid by the writ petitioners to the contesting respondents, namely, the West Bengal State Electricity Board.

