
(2009) 09 AHC CK 0186
In the Allahabad High Court

L.M.L. Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Uttar Pradesh Industrial Undertakings (Special Provisions for Prevention of Unemployment) Act, 1966 — Section 3(1)

Citation : (2009) 4 AWC 3968

Hon'ble Judges : R.A. Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri M. L. Lahoty advocate assisted by Sri B. C. Roy, learned Counsel for the petitioner, Sri K. R. Sirohi, learned senior advocate assisted by Smt. Mridul Tripathi appearing for respondents No. 2, 3 and 4 as well as learned standing counsel representing the respondent No. 1.

2. Counter - affidavit and rejoinder - affidavit have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being finally decided.

3. Brief facts of the case as emerged from the pleadings of the parties are that the petitioner is a public limited company engaged in manufacture and sale of two wheelers, scooters and motorcycles having its registered office at Panaki Industrial area Kanpur. The company obtained power load from the Kanpur Electric Supply Administration (K.E.S.A.) which was extended from time to time and in the year 2006, the sanctioned load of the company was 8 M.V.A. from 132 K.V. line. Due to shift in preference of consumers for 4 strokes motorcycles over 2 stroke scooters, the production of scooters of L.M.L. fell down. The company started restructuring its business and took initiative to manufacture 4 stroke motorcycles, but due to the market conditions it incurred substantial loss. Apprehending that its work force of 6000 directly would be adversely affected, the company represented to the State Government for declaring L.M.L. as "relief

undertaking" u/s 3 (1) of the U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966. Notification was issued by the State Government on 24.6.2004 suspending for a period of one year all contracts, agreements, other instruments etc. in force under any law, which was subsequently extended for two successive years up to 23.6.2007. An illegal strike was called on 27.2.2006 disrupting the operations of the company ultimately leading to the declaration of lockout on 7.3.2006. Due to strike and lockout, all the manufacturing activities came to a halt. The petitioner realizing that load of 8 M.V.A. is not at all required moved a formal application dated 31.3.2006 requesting the K.E.S.C.O. for reduction of contracted load from 8 M.V.A. to 1.25 M.V.A. In the application, it was prayed that load reduction be made effective from 1.4.2006. There being urgency in the matter, the company also wrote to the Principal Secretary, Energy, Government of U.P. informing that load reduction from 8 M.V.A. to 1.25 M.V.A. is extremely necessary. On 19.4.2006 a meeting took place between the K.E.S.C.O. and the petitioner company in which decision for reduction of load was taken with certain conditions.

4. On 19.4.2006, the K.E.S.C.O. conveyed to the U.P. Electricity Regulatory Commission regarding its agreement for reduction of load and sought the formal approval of U.P.E.R.C. The U.P. Regulatory Commission considered the matter on 26.4.2006 and conveyed its order dated 8.5.2006. The Commission did not raise any objection regarding decision of load reduction. However, it observed that agreement which has been reached between the parties are internal to the parties and the same has to be strictly in accordance with the Electricity Supply Code, 2005. After the aforesaid order of the U.P.E.R.C, the petitioner on 17.5.2006 wrote to the K.E.S.C.O. to reduce the load w.e.f. 1.4.2006 as per the application dated 31.3.2006. The letter dated 21.6.2006 was also written to the Principal Secretary, Energy that the load reduction had not been given effect to although it was expressly agreed upon.

5. The electricity bill for the month of May, 2006 based on 8 M.V.A. load was given to the petitioner on 7.6.2006. The petitioner immediately sent a letter on 7.6.2006 protesting that bill amount has been inadvertently raised on 8 M.V.A. load, whereas there is already agreement for load being 1.25 M.V.A. The petitioner paid the bill on the basis of 1.25 M.V.A. load. The company also invoked the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to 1985 Act). The reference was registered as Case No. 80 of 2006 on 15.9.2006 and thereafter on 8.5.2007, L.M.L. was declared as sick industrial company u/s 6(3)(o) of the 1985 Act. The I.D.B.I. Bank was appointed as operating agency. On 4.10.2006, K.E.S.C.O. has written a letter to the petitioner for submitting the bank guarantee for the arrears of the amount as per the Clause 4.49 of U.P. Supply Code, 2005 so that action may be taken to reduce the load from 8 M.V.A. to 1.25 M.V.A. The petitioner wrote to the K.E.S.C.O. on 11.10.2006 that as per agreement, the petitioner is paying the energy bill on the unit consumed without any default. The company also informed that payment of arrears of electricity dues will be finalised after

restoration of normal work of the factory taking into consideration the order dated 13.7.2005 of U.P.E.R.C. read with the order dated 8/9.5.2006. The company decided to recommence in a small way its manufacturing activities and, accordingly it requested K.E.S.C.O. on 11.3.2007 to increase the contracted load from 1.25 M.V.A. to 2.25 M.V.A. On 20.3.2007 K.E.S.C.O. conveyed to the petitioner that its load reduction application could not be considered due to non-submission of the bank guarantee by the petitioner. An application dated 19.4.2006 was moved by the petitioner being Application No. R-919/2007 to U.P.E.R.C. praying for suitable order directing K.E.S.C.O. to comply with the agreement dated 19.4.2006 and the order dated 8.5.2006 passed by the U.P.E.R.C. On 3.8.2007, a settlement with regard to payment of arrears was arrived noticing the proposal of the petitioner that in first step three cheques of Rs. 25 lacs each were to be given by the petitioner against the arrears and w.e.f. August, 2007 apart from monthly bill of Rs. five lacs be deposited towards arrears. U.P. Power Corporation Ltd. accepted the settlement as proposed on 3.8.2008 by letter dated 8.8.2007. The B.I.F.R. (Board for Industrial and Financial Reconstruction) where the petitioner unit was registered as sick unit held various proceedings dated 22.10.2007, 19.8.2008, 6.2.2009, 21.4.2009, 19.6.2009 and 30.7.2009. On 22.10.2007, the B.I.F.R. directed that K.E.S.C.O. would continue to accept Rs. 5 lacs per month against their arrears besides payment of current electricity bill on actual consumption basis and not to adopt to coercive measures to disconnect electricity supply. On 6.4.2009, a disconnection notice was issued by the K.E.S.C.O., against which Writ Petition No. 20499 of 2009 was filed by the petitioner, in which writ petition an interim order was granted by this Court on 22.4.2009 directing that in case, the petitioner continues to pay the amount as directed by the B.I.F.R. its electricity supply will not be disconnected. The said writ petition is still pending.

6. The petitioner's claim for reduction of load from 8 M.V.A. to 1.25 M.V.A. w.e.f. 1.4.2006 not being decided or implemented, the petitioner has filed this writ petition for following reliefs:

(I) pass appropriate writ, order or direction directing that the load of L.M.L. stood reduced from 8 M.V.A. to 1.25 M.V.A. pursuant to the then prevalent provisions of Clause 4.41 (b) of the Code, 2005 w.e.f. 1.4.2006, 2.25 M.V.A. w.e.f. April, 2007 and 2.50 M.V.A. w.e.f. August, 2007.

(II) Pass appropriate direction to U.P.E.R.C./respondent No. 4 to decide the pending Application No. R-919 of 2007 dated 20.3.2007 pertaining to compliance of its own order dated 8.5.2007;

(III) Pass other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

7. Learned Counsel for the petitioner in support of the writ petition submitted that the petitioner's application dated 31.3.2006 having been made in accordance with the "provisions of U.P. Electricity Supply Code, 2005, Clauses

4.41 and 4.49 alongwith all relevant papers and the decision having been taken by the respondents on 19.4.2009 to accept the reduction of load nothing further was required to be done and the reduction of load was to be implemented as prayed by the petitioner. It is further submitted that even reference to the U.P.E.R.C. sent by the respondents on 24.4.2006 was favourably replied by U.P.E.R.C. by its order dated 8.5.2006 without raising any objection to action of the respondents for not giving effect to reduction of load from 1.4.2006 is against the provisions of the Supply Code, 2005 as well as against own decision taken by the respondents. It is contended that the petitioner company having already been declared "relief undertaking" under the provisions of U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966, which declaration was in existence at the time when the application for reduction of load was made, the respondents, were to implement the decision looking to the facts and circumstances of the present case. It is submitted that Supply Code, 2005 was amended w.e.f. 14.9.2006 which amended provisions were not applicable with regard to application submitted by the petitioner for reduction of the load on 31.3.2006 and the reliance of the respondents on the amended provisions of Supply Code, 2005 is not correct. It is submitted that even the arrears against the petitioners were not finalised and there were claim of the petitioners against the respondents for refund of the amount due to extra payment charged by K.E.S.C.O. in 1996 plus interest. Reliance has also been placed by Mr. Lahoty on the orders and proceedings undertaken by the B.I.F.R. where B.I.F.R. has directed the K.E.S.C.O. to continue to take Rs. 5 lacs per month against the arrears and the electricity bill on the basis of consumption of the energy. It is submitted that the petitioner is continuously making payment of the electricity bill on the basis of the consumption of the energy. Sri Lahoty further submits that insistence of the respondents to submit a bank guarantee to cover up arrears of dues is not applicable since the application was given at the time when the Code was not amended and at the relevant time bond and instruments were also acceptable, the petitioner had filed an affidavit accepting the liability to pay the arrears after the appropriate decision is taken regarding the liabilities towards arrears. He submits that the petitioner is entitled for relief as claimed in writ petition for treating its load having been reduced as 1.25 M.V.A. w.e.f. 1.4.2006 and liability of the petitioner has to be in accordance with the said reduction.

8. Sri K. R. Sirohi, learned senior advocate appearing for the respondents refuting the submissions of learned Counsel for the petitioner, contended that the application of the petitioner for load reduction dated 31.5.2006 was not acceptable it being not in accordance with the provisions of Clause 4.49 of Supply Code, 2005. The condition that there should be a stay order by any Court/ Forum against the arrears, which were due against the petitioner being not justified, the load reduction could not have been ordered. He further submits that load reduction could not have been ordered under the Supply Code, 2005 hence, in accordance with provisions of paragraph 9.5, the recommendation was made

to U.P. Electricity Regulatory Commission for obtaining the necessary orders to remove the defect and U.P.E.R.C. having taken a decision on 8.5.2006 that the provisions of the Code be strictly followed for load reduction, the sanction of load reduction to 1.25 M.V.A. was not given since according to Clause 4.49, the petitioner did not fulfil the conditions. It is further submitted that the petitioner was required to submit a bank guarantee which having not been submitted, load reduction was not possible. He further submits that even the bond/ instrument/ bank guarantee given by the consumer is to be as per satisfaction of the licensee and licensee being not satisfied, no order/ sanction of reduction of load having been issued by the respondents, the reduction of load cannot be accepted w.e.f. 1.4.2006.

9. We have considered the submissions of learned Counsel for the parties and have perused the record.

10. Before we proceed to consider the respective submissions of learned Counsel for the parties, it is necessary to refer to relevant provisions applicable for reduction of load. According to Section 50 of the Electricity Act, 2003, the U.P. Electricity Regulatory Commission has specified the Electricity Supply Code, 2005. U.P. Electricity Code as it was in existence on 31.3.2005 contained a specific provision Clause 4.41 for reduction in contracted load and Clause 4.49 for release of connection/ load where arrears disputed are stayed by Court/other forums. The relevant portion of Clause 4.41 of Supply Code is as follows:

4.41 Reduction in contracted load.-(a) Every application for reduction of contracted load shall be made in duplicate to the concerned officer on prescribed form (Annexure-4.10) alongwith the prescribed processing fee and charges for reduction of load alongwith the following documents:

(i) Work completion certificate and test report from a licensed electrical contractor where alteration of the installation is involved.

(ii) Maximum demand recorded in the last two billing cycles if the meter has the facility to record maximum demand and the electricity bill of the previous two billing cycles.

(iii) Letter of approval from the electric - inspector, wherever applicable (or as per rules when framed u/s 53).

(iv) Copy of the latest paid electricity bill. If matter related to dues is pending in Court, the procedure as per Clause 4.49 may be followed.

(b) The designated authority of the licensee shall communicate to the consumer the decision on his application within thirty days of receipt of the duly completed application.

(c) A fresh agreement for reduced load shall be executed for 2 years but the period of compulsory agreement of 2 years for the purpose of payment of M.C.G. shall be counted from the date of original agreement for the purpose of P.D.

(d) No refund shall be allowed for the deposited cost of the line and sub-station. However, if the security deposited earlier is in excess of the requirement for the reduced load, the excess shall be adjusted in future bills.

(e) The effective date of such reduction shall be reckoned from the first day of the following month in which the application has been sanctioned by the licensee.

(f)

Clause 4.49 as it then existed on 31.3.2005 was as follows:

4.49. Release of connection/ load where arrears disputed are stayed by Court/ other Jorums:

Where there is stay order by any Court, Forum Tribunal, or by Commission, staying the recovery of any dues by licensee, and during the operating period of any such order:

(i) If a consumer sells a premises and an application for release of new connection is made by the purchaser,

Or

(ii) If any application for enhancement or reduction of load is made by a consumer,

The licensee shall release the new connection to such consumer and also permit reduction or enhancement of loads,

Subject to

? Submission either of bank guarantee, or bonds, or any instruments to the satisfaction of licensee of equivalent amount of pending dues, by the applicant, and,

? Agreement with licensee on terms of extension/invoking of guarantee, and

? Levy of surcharge amount on pending dues,

And, the application of such consumers shall not be kept pending by the licensee.

11. A perusal of Clause 4.41 indicates that application has to be made in proforma as prescribed in Form (Annexure-4.10) with the documents as mentioned in Clause {a)(i)(iv). Clause (iv) provides that application be submitted with copy of the latest paid electricity bill and if the matter is related to dues is stayed and pending in Court, the procedure as per Clause 4.49 be followed. Clause (b) mandates that the designated authority of the licensee after verification, shall sanction the reduced load to the consumer within thirty days from the date of acceptance of application. From the materials brought on record, it is apparent that no shortcoming in the application submitted by the petitioner for load reduction has been pointed out by the respondents except non-compliance of Clause 4.49 that too in the counter-affidavit filed in this Court and

vide its letter dated 4.10.2006 by which bank guarantee was asked for and vide letter dated 20.3.2007.

12. Clause 4.49 provides that where there is a stay order by any Court, Forum or Tribunal staying recovery of any dues by licensee and if application for enhancement or reduction of load is made by consumer the said reduction or enhancement be made subject to submission either of bank guarantee or bonds or any instrument to the satisfaction of the licensee of equivalent amount of pending dues, by the applicant. The Supply Code, 2005 was amended w.e.f. 14.9.2006 and Clause 4.49 as amended provides for as follows:

4.49. Permanent disconnection / release of connection/ enhancement and reduction of load where arrears disputed are stayed by Court/other forums:

Where there is a stay order by any Court, Forum, Tribunal, or by Commission, staying the recovery of any dues by licensee, and during the operating period of any such order:

(i) If a consumer sells a premises and an application for release of new connection is made by the purchaser; or

Or

(ii) If any application for new connection, reconnection, enhancement or reduction of load is made by a consumer; or

(iii) If any application for permanent disconnection is made by a consumer the licensee shall release the new connection to such consumer and also permit reconnection, reduction or enhancement of loads, as well as allow permanent disconnection.

Subject to

? submission of Bank Guarantee to the satisfaction of licensee, of equivalent amount of pending dues, by the applicant or owner, and,

? agreement with licensee on terms of extension/invoking of guarantee, and

? levy of surcharge amount on pending dues,

and the application of such consumers shall not be kept pending by the licensee.

13. The submission which has been pressed by learned Counsel for the respondents is that there being arrears against the petitioner's company load reduction could not have been allowed since there was no stay from any Court or Forum thus paragraph 4.49 was not applicable. A perusal of Clause 4.49 indicates that the said clause provides for release of new connection or permit reduction or enhancement where there is a stay order by any Court, Forum, Tribunal or by Commission, staying the recovery of any dues. There is no order of any Court relied by the petitioner. The reliance which has been placed by the petitioner is on the notification dated 24.6.2004 issued under Sub-section (1) of

Section 3 of U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966. The relevant part of the notification is as follows:

Now, therefore, in exercise of the powers under Sub-section (1) of Section 3 of the aforesaid Act, the Government is pleased to declare that the aforesaid company shall be a relief undertaking for a period of one year with effect from the date of publication of this notification in the Gazette and consequently under Clause (b) of Sub-section (1) of Section 4 of the said Act, all the contracts, assurance of property, agreements, settlements, awards, standing orders or other instruments, except those entered into under the Acts mentioned in the Schedule, in force under any law whatsoever to which the undertaking is a party or which may be applicable to the undertaking, immediately before the date of its declaration as relief undertaking shall be suspended in operation for period of one year with effect from the date of publication of this notification in Gazette.

By order Atul Kumar Gupta, Pramukh Sachiv.

14. By subsequent notification dated 14.6.2005, the operation of the notification dated 24.6.2004 was extended for one year and again the same was extended for one year by notification dated 2.6.2006. Thus, at the relevant time when the petitioner made application for reduction of load, i.e., 31.3.2006, the petitioner was a "relief undertaking" within the meaning of the Act. The consequence of declaration of a unit as a relief undertaking has been provided u/s 4 of the Act. Section 4 of the Act is quoted as follows:

4. Consequences of declaration u/s 3 (1).- Where the State Government is satisfied that it is necessary or expedient so to do for the purposes specified in Section 3, it may, by notification in the Gazette, direct in relation to any relief undertaking:

(a) that all or any of the enactments specified in the Schedule shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission, as may be specified in this behalf;

(b) that all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force under any law whatsoever to which the undertaking is a party or which may be applicable to the undertaking, immediately before the date with effect from which the undertaking was declared a relief undertaking, shall be suspended in operation, or that all or any of the rights, privileges, obligations, and liabilities accruing or arising thereunder before the said date, shall be determined and be enforceable with such modifications and in such manner as may be specified in this behalf.

(2) A notification under Sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument, and any remedy for the enforcement of any right, privilege, obligation or liability referred to in Clause (b) of Sub-section (1) and suspended or modified by such notification shall in accordance with the terms of the notification be suspended or

modified and all proceedings relating thereto pending before any Court, Tribunal, officer or authority shall accordingly be stayed or be continued subject to such notification, so, however, that on the notification ceasing to have effect, all rights, privileges, obligations or liabilities so suspended or modified shall revive or revive in their unmodified form and be enforceable and all such proceedings as aforesaid shall thereafter be continued from the stage they were stayed, and in computing the period of limitation for the enforcement of any such right, privilege, obligation or liability, the period during which it or the remedy for the enforcement therefore was suspended, shall be excluded.

15. A perusal of Section 4 of the 1996 Act indicates that the liabilities accruing before the relevant date shall remain under suspension till the notification remains in force. The preamble of the Act itself provides that the Act has been enacted to enable the State Government to make special provisions for limited period in respect of industrial relations, financial obligations and other like matters in relation to those industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against unemployment. As noticed above, the petitioner claims that there were 6,000 persons directly employed and 20,000 persons indirectly employed, who were to be adversely affected by closure of the unit. Reliance has been placed by the petitioner on a Division Bench judgment of Rajasthan High Court in the case of Modern Syntax (I) Ltd. Vs. Debts Recovery Tribunal Jaipur and Others, In the said case the proceedings were initiated by the State Bank of Bikaner for recovery in accordance with the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The unit was notified under the Rajasthan Relief Undertakings Act, 1961. On 15.2.2000, the objection was raised on the basis of the said notification that recovery cannot be initiated which objection was rejected by the Debt Recovery Tribunal, Jaipur. Aggrieved by the said rejection, the writ petition was filed. The Division Bench took the view that the proceedings initiated for the recovery of the dues from the company stand stayed till the currency of the notification. Following was laid down in paragraph 27 which is quoted below:

27. As seen above, the effect of the notification is that any right, privilege, obligation or liability accrued or incurred by a notified company, before it is declared a relief undertaking and any remedy for enforcement therefore becomes suspended and consequently even the winding up proceedings against such company can be stayed. As a result of the notification, the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, award, settlement or other provisions, whatsoever, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as relief undertaking, all proceedings related thereto pending before any Court, Tribunal, officer or authority shall be stayed. The same view has been taken by our High Court in the case of Jaysynth Dyechem and Vs. Mewar Textile Mills Ltd.,

16. Thus, consequence of notification issued u/s 3 of 1996 Act which was accruing at the time when the application for reduction of load was submitted by the petitioner, the recovery of arrears are to be treated to have been stayed and thus, the submission of the counsel for the respondents that there being no stay from any forum, Clause 4.49 cannot be applicable, cannot be accepted. The petitioner has also relied on the registration of the unit under 1985 Act on 15.9.2006. It has been further stated that unit was declared as sick unit on 8.5.2007 and the various orders have been passed thereafter by the B.I.F.R. However, since the said orders by B.I.F.R. is subsequent to the date of the application by the petitioner, i.e., 31.3.2006, it is not necessary to consider any further the consequence of various proceedings and orders passed by the B.I.F.R.

17. The next submission which was relied by learned Counsel for the respondents in not accepting the load reduction application is that the petitioner has not submitted a bank guarantee as required under paragraph 4.49 of the Code. It is relevant to note paragraph 4.49 of the Code as it existed at the time when the application was made require submission of bond or any instruments apart from the bank guarantee. The reliance has been placed by the petitioner on an affidavit filed in support of the application. The requirement of submitting bond or instrument having been deleted by amendment made in the Supply Code on 14.9.2006, after 14.9.2006 now only bank guarantee is to be given for equivalent amount of pending dues. The application having been submitted on 31.3.2006 and according to Clause 4.41 (b) the decision on the application was to be communicated within 30 days. Thus, the relevant provisions applicable is unamended Clause 4.49. The petitioner in the writ petition has relied on affidavits dated 31.3.2006, and 18.4.2006 of L. K. Singhania, the Whole Time Director. In the affidavit dated 18.4.2006, it was clearly affirmed that the deponent of the affidavit confirms and agrees that the company shall comply with and implement the final decisions in respect of various matters pending and shall make payment of dues if any of K.E.S.C.O. in terms of the said order / judgments.

18. At this juncture, it is also necessary to dispose of one objection raised by learned Counsel for the respondents that in the affidavit even amount of arrears has not been disclosed nor it can be read to be securing any fixed amount. It is relevant to note that there was dispute regarding arrears between the parties and there has been certain directions issued in the meeting held on 19.12.2005 with Principal Secretary Energy, U.P. Government regarding payment of arrears. The issue was also raised that the affidavit cannot be treated to be an instrument as per paragraph 4.49. The word "instrument" has not been defined in the Electricity Act, 2003 and U.P. Electricity Supply Code, 2005. Reliance has been placed on a Division Bench judgment of Andhra Pradesh High Court in case of K. Sambasivaraju Vs. M.V.S.R. Chandrayya Chetty and Others, wherein it was held that word "instrument" as defined in Section 2 (14) of Stamp Act, 1899, Schedule 1 must receive extensive meaning including affidavit.

19. The said judgment do support the submissions made by learned Counsel for the petitioner. However, there is another reason due to which the objection of the respondents in this regard cannot be accepted. On the basis of the application dated 31.8.2006, a meeting was held between the petitioner and the respondents, where decision was taken with regard to load reduction. The said decision has been brought on record as Annexure-4 to the writ petition, which has been duly signed by the Managing Director, K.E.S.C.O. and Executive Director of the petitioner. A perusal of the said proceedings indicate that a decision was taken in the meeting to reduce the load which was to be applicable subject to certain conditions as mentioned in the letter. The conditions as mentioned in the letter were following under which the load reduction was to be made:

L.M.L. (i) would deposit the required fees for load reduction, (ii) would pay system loading charges in accordance with law in future, if the load is to be enhanced, (iii) would regularly pay its monthly bills, (iv) would accept the decision of the Court regarding the pending disputes and (v) the decision of U.P.E.R.C. (U.P. Electricity Regulatory Commission) in this regard would be acceptable to both the parties.

20. A perusal of the decision which is brought as Annexure-4 to the writ petition indicates that decision for reduction of load was taken by the competent authority which however, was subject to the condition thus the submission of the petitioner is correct that decision on principle allowing reduction of load application was taken which was subject to condition. Thus, while taking the decision on 19.4.2006, no shortcoming in the application or non-compliance of any requirement as required by Clauses 4.49 and 4.41 was pointed out. Thus, the respondents accepted the application as submitted by the petitioner to be complete and in order. The respondents neither insisted on submission of any bank guarantee for arrears nor the bank guarantee/bond/ instrument was made any issue for nor accepting the application. The condition No. (i) provided for deposit of required fee for load reduction. Condition No. (ii) provided that in the event of being enhancement of load in future, the petitioner shall pay the system loading charge. Thus, Clause (ii) specifically noted about the load reduction since it talked about the enhancement of the load in future. Clause (iii) provided for payment of monthly bills within due date. Clause (iv) provided for accepting the decision taken in the various cases and Clause (v) provides for that the matter be sent for approval to U.P.E.R.C. and its decision shall be binding on both the parties. It is not a case that any of the conditions No. (i) to (iv) have not been complied with or could not have been complied. The respondents counsel submits that decision which was taken by the U.P. Electricity Regulatory Commission is a decision refusing to accept the load whereas learned Counsel for the petitioner submits that U.P. Electricity Regulatory Commission did approve the recommendations of the respondents for reduction of the load. Copy of the order dated 9.5.2009 has been brought on record as Annexure-6 to the writ petition. With regard to issue of load reduction following is the extract of the

proceedings:

(II) Regarding the second issue, M.D. K.E.S.C.O. vide letter No. 315/C-Bulk the Commission informs that M/s. L.M.L. Panki, Kanpur has intimated that due to labour unrest in their factor, a lockout has been declared, as a result of which the production work has stopped. In view of this M/s. L.M.L. have requested for reduction of load from 8 M.V.A. to 1.25 M.V.A.

The letter also inform that M/s L.M.L. has at present outstandings of Rs. 842.01 lacs. As per Clause 4.49 of the Supply Code, 2005, in case there are arrears of dues on a consumer, the reduction of load cannot be processed. The letter also states that in view of lockout in the factory, and financial constraints of the unit, the payment of minimum charges on the contracted load to 1.25 M.V.A. Further, the decision on the outstanding dues is also pending. M.D., K.E.S.C.O. has proposed that pending decision on outstanding dues, the load may be reduced and realisation can be made after the decision on the dues has been taken, Commission's permission has been sought in this regard.

Commission's observations:

(a) As informed by the parties during the hearing, the Commission observes that the parties have reached to an agreement of outstanding in instalments and also on the reduction of load.

(b) As pointed out by Shri R. K. Srivastava representing M/s. L.M.L., the Commission observed that the payment schedule has not been renegotiated by the K.E.S.C.O. in terms of Commission order dated 13.7.2005.

(c) Not going into the merits of any action or agreement that have been reached to between the parties as these are internal to the parties, the Commission feels, the same has to be strictly in accordance to the Electricity Supply Code, 2005, the tariff orders of the Commission, as well as Commission's order dated 12th and 13.7.2005.

Commission's directions:

In view of the Commission's observation in paras (I) and (II) above, the respondents are directed:

1. To recover the late payment surcharge for the said period at the rates allowed to industrial units in distress, covered under the said Acts or orders of the Government, provided these are not below the prevailing bank rates for the applicable periods. Provided also, that if the unit commits default in timely payment of instalments granted, the late payment surcharge on arrears thus generated shall be recovered as per existing provisions of the Supply Code Tariff order.

2. To work out the schedule of payment in terms of Commission order dated 13.7.2005.

21. A perusal of the above proceedings indicate that U.P. Electricity Regulatory Commission itself has noticed that the respondents have proposed reduction of the load thus, the decision of reduction of load at the level of the respondents was already taken. U.P. Electricity Regulatory Commission did not object to reduction of load nor pointed out any shortcoming or illegality. Much reliance has been placed by Sri K. R. Sirohi on the observation of the Commission that agreement between the parties has to be strictly in accordance with the Electricity Supply Code, 2005. He submitted that since the load could not have been reduced without submission of the bank guarantee which was requirement of Supply Code, 2005, no further step was taken by the respondents.

22. A perusal of the decision of the Commission dated 8.5.2006 indicates that Commission has noticed that parties have reached to an agreement for reduction of load thus, the decision on reduction of load was already taken by the parties, which was noticed by the Commission without any objection. The observation that any action or agreement between the parties has to be in accordance with the Electricity Supply Code, 2005 was an observation made by the Commission which in no manner affect the decision already taken by the parties regarding reduction of load. Such observations were general observations and we having already found as above that there was compliance of Clause 4.49 in the application of the petitioner submitted for reduction of load, the submission of learned Counsel for the respondents that Clause 4.49 having not been complied reduction of load could not have been effected, has no merit.

23. It is relevant to note letter dated 4.10.2006 of the respondents asking the petitioner to submit a bank guarantee, bond equivalent to pending dues and the letter dated 20.3.2007 taking the view that as per amendment dated 14.9.2006 in the Supply Code, 2005 bank guarantee is wanted hence, the approval of load reduction could not be granted, the above letters are of no consequence since the decision of load reduction was already taken on 19.4.2006 according to unamended Supply Code, 2005. Nothing more was required to be done after decision of reduction of load was taken by the respondents. In fact the reference to U.P. Electricity Regulatory Commission was also not necessary since provisions of the Code do not require any approval by the Commission of the decision taken by the licensee for reduction of load. The said reference by the respondents to the U.P. Electricity Regulatory Commission was redundant exercise which in no manner can affect rights of the petitioners which accrued on the basis of the decision taken on 19.4.2006.

24. We cannot lose sight of the facts and circumstances under which the application for load reduction was submitted by the petitioner. There was lockout in the company. Manufacturing had stopped after 7.3.2006, when lockout was declared. The company did not require the huge electricity load of 8 M.V.A. after lockout was declared. To save itself from heavy liability of 8 M.V.A., the company made an application with further stipulation as and when manufacturing resumed prayer for enhancement will be made. The respondents at the relevant time

being alive to the facts and circumstances that the company does not require the load of 8 M.V.A. accepted the request of the petitioner for load reduction request which is proved from its decision taken on 19.4.2006. The subsequent stand taken by the respondents and continued submission of electricity bill on the basis of 8 M.V.A. although production remained stopped was unjust and not in accord with the decision taken by them on 19.4.2006. The State Government having already notified the company under U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966 as "relief undertaking" the said decision or declaration is binding on all instrumentalities of the State including the respondents. The respondents cannot be permitted to act discarding the very object for which the company was declared as "relief undertaking". The company which was already in loss and was declared as "relief undertaking" could not be allowed to bear such heavy liability of billing on the basis at 8 M.V.A. by the respondents only because it was beneficial to them to bill the petitioner at 8 M.V.A., whereas the load reduction was agreed for on 19.4.2006. The stand taken by the respondents and letters written by it to the petitioner in this regard as noticed above, are not in accord with the principles of justice and fairness.

25. It is also relevant to note that the petitioner has been paying the monthly electricity bill on the basis of the actual consumption during all this period with regard to which direction was also made by B.I.F.R. and the respondents cannot be said to be in any actual loss having been paid the electricity bill according to the actual consumption.

26. In view of the foregoing discussions, we are of the considered opinion that the reduction of the load of the petitioner stood approved on 19.4.2006 and any further action which was to be taken by the respondents thereafter was only ministerial which cannot be said to have any effect on the claim of the petitioner to treat the load having been reduced. The decision having been taken on 19.4.2006, the effective date of such reduction shall be reckoned from the first day of following month as per Clause 4.41 (e), i.e., from 1.5.2006. We direct accordingly. In view of the aforesaid, the petitioners are entitled for the reliefs as claimed in the writ petition. The writ petition is allowed. We however, further provide that in the event any further formalities are to be completed, the same be completed by the respondents within a period of one month.

The parties shall bear their own costs.