
(2017) 03 AHC CK 0128
In the Allahabad High Court
Case No : Writ C. No. 30898 of 2016

M/S Dev Prayag Paper Mill (Pvt.)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Electricity Act, 2003 — Section 47(5)

Citation : (2017) 4 ADJ 190 : (2017) 3 AILLJ 497 : (2017) 2 AllWC 2012

Hon'ble Judges : Dilip B Bhosale, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Bidhan Chandra Rai, for the Petitioner; C.S.C, Amrendra Nath Singh, Mahboob, Ahmad, S.S.A. Kazmi, Vinay Kumar Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Dilip B Bhosale, C.J.—; This bunch of writ petitions, under Article 226 of the Constitution of India, challenge demand notices issued by Distribution Companies, through its Executive Engineers, whereby the petitioners are directed to/required to deposit additional security for supply of electricity, with the warning that if the payment of security is not made within the stipulated time, appropriate action would be taken in accordance with law. The petitions also challenge the provisions contained in clause (I) of Para 4.20 of the Electricity Supply Code, 2005 (for short, "Supply Code, 2005") insofar as it provides "as and when a distribution licensee provides a choice to consumer to opt" being ultra vires the provisions of sub-section (5) of Section 47 of the Electricity Act, 2003 (for short, "Act, 2003"). It appears that in most of the writ petitions, this Court has granted interim orders in favour of the petitioners. Since the questions raised in the writ petitions are similar, the entire bunch of petitions is being disposed of by this common judgment.

2. In order to understand, appreciate and consider the controversy, it would be appropriate to state the facts in Writ Petition No. 30898 of 2016, to the extent

they are necessary for our purpose. The petitioner - company, registered under the Companies Act, 1956, is an industrial unit, engaged in the manufacture of craft paper, mill-board, grey board, duplex board, copying and packaging paper. It is a consumer within the meaning of clause (15) of Section 2 of the Act, 2003, which draws electricity from respondent no.3 - Purvanchal Vidyut Vitran Nigam Limited, a State Power Distribution Company. The petitioners in all writ petitions consume high volume of electricity and are classified as High Tension (for short, "HT") consumers. The petitioner - company got an electricity connection for which they had deposited a sum of Rs. 53,28,300/- towards security. According to petitioner, respondent no.4 - Executive Engineer, Electricity Urban Distribution Division, of respondent No. 3 - State Power Distribution Company, in purported exercise of the powers under circular dated 07.03.1994 and the Supply Code, 2005, issued a demand notice dated 09.06.2016, for the financial year 2015-16, to pay a total security amount of Rs. 87,40,891. After adjusting the amount that was already paid, the petitioner was directed to pay the difference of the amount, i.e. Rs. 34,12,597/-. Such demand notices forced all the petitioners-HT consumers, to file writ petitions not only challenging the demand notices but also the provisions of clause (I) of Para 4.20 of the Supply Code, 2005 being ultra vires the provisions of sub-section (5) of Section 47 of the Act, 2003.

3. The petitioner claims, as provided for under Section 47(5) of Act, 2003, that it has already informed the respondent no.4 - Executive Engineer to install prepaid meters vide letter dated 21.04.2016 and in view thereof, no security, as contemplated by sub-section (1) of Section 47, is liable to be paid. On this ground alone, the impugned demand according to the petitioner is illegal. The petitioners have not challenged their liability to deposit security as such and what they have challenged is the impugned demand for additional security for supply of electricity. Similar are the facts and circumstances against which the petitioners in all other writ petitions have approached this Court, raising similar challenge after having received demand notices issued by the respective State Power Distribution Companies, and for uninterrupted electrical energy being supplied to them without providing prepaid meters under Section 47 (5) of the Act, 2003.

4. The provisions of clause (I) of Para 4.20 of the Supply Code, 2005, which is under challenge, provides that a distribution licensee shall not be entitled to require security in pursuance of sub-section (1) of Section 47 of the Act, 2003, if the person requiring the supply is prepared to take the supply through a prepaid meter, "as and when distribution licensee provides a choice to consumer to opt for supply through prepaid meter". This clause was inserted vide notification No. UPERC/Secy/Regulation/Supply Code/2006-517 dated 11.08.2006. This provision, according to the petitioner, is ultra vires the provisions contained in sub-section (5) of Section 47 of the Act, 2003.

5. It would be relevant and necessary, in order to appreciate and deal with the challenge, to reproduce Section 47 which reads thus:

"47. Power to require security.- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-

(a) in respect of the electricity supplied to such person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of subsection (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter."

(emphasis supplied)

6. A plain reading of sub-section (5) of Section 47 shows that a distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1), if the person requiring the supply is prepared to take the supply through a prepaid meter. In view of the language employed in Section 47, in particular sub-section (1) and sub-section (5) thereof, and the language used in clause (l) of Para 4.20 of the Supply Code, 2005, the petitioners contend that since they have opted for supply of electricity through prepaid meters, it is mandatory for the licensee, namely respondent no.3 - distribution company within the meaning of Section 14 of the Act, 2003, to provide and supply electricity through prepaid meters and the licensee cannot insist upon HT consumers to furnish security deposit/revised security deposit on the ground of

increase in consumption of electricity and such action of the power distribution company is ex-facie illegal and contrary to the statutory mandate. In short, they contend, it is illegal to insist upon the deposit of the differential amount of security on the ground of increase in consumption of electricity if the request of HT consumers for installation of prepaid meter is pending. They also contend that Section 47 (5) casts a duty on the licensee to secure prepaid meters and provide the same to HT consumers. They are denuded of the power to demand a security deposit once a request is made by the consumers for installation of prepaid meters.

7. Thus, the question that falls for our consideration is whether it is mandatory for a licensee to provide prepaid meters the moment such a request is made by the HT consumer, as provided for under Section 47(5) of Act, 2003 and/or whether it is open to a HT consumers to claim exemption from payment of additional security deposit as contemplated by sub-section (2) of Section 47 on the ground that their request for installation of a prepayment meters is pending. We would also like to consider the question whether the provisions contained in clause (I) of Para 4.20 of Supply Code, 2005, is ultra vires the provisions contained in sub-section (5) of Section 47 of the Act, 2003.

8. The petitioners are, admittedly, consumers as defined under subsection (15) of Section 2, which means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are, for the time being, connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. Sub-section (17) of Section 2 defines a "distribution licensee" to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply.

9. In the State of Uttar Pradesh, there are four distribution companies, namely, Paschimanchal Vidyut Vitran Nigam Limited, Poorvanchal Vidyut Vitran Nigam Limited, Dakshinanchal Vidyut Vitran Nigam Limited and Madhyanchal Vidyut Vitran Nigam Limited, which have deemed licensee status in accordance with fifth proviso to Section 14 of the Act, 2003. Before these distribution licensees came into existence, it appears that in pursuance of Section 131 (4) of the Act, 2003 and sub-section 4 (23) of the U.P. Electricity Reforms Act, 1999 (for short, "Reforms Act"), the Uttar Pradesh Power Sector Reforms (Transfer of Distribution Undertakings) Scheme, 2003 was effected on 12 August 2003, wherein the U.P. Power Corporation Limited, i.e. one of the aforesaid distribution licensees was broken into the above four distribution companies. Under the Reforms Act, the U.P. Electricity Regulatory Commission (for short, "Commission") was assigned the functions to regulate the distribution, supply, utilization of electricity, issue licenses to regulate the working of licensees and to set the standards of services for the consumers as well as standards for the electricity industry in the State.

While granting licenses to the then three major licensees, namely, Uttar Pradesh Power Corporation Limited (UPPCL), Kanpur Electricity Supply Company Limited (KESCO) and Noida Power Company Limited (NPCL), the Commission required that the licensees should prepare distribution codes and submit them to the Commission for approval, as a condition of the supply licence. In pursuance to the Commission's direction, UPPCL had submitted a draft distribution code which was approved by the Commission and was made applicable in areas served by all three companies with effect from 1 July 2002. The Act, 2003 was made applicable on 9 June 2003, as a self-contained comprehensive legislation, which replaced the existing legislations while preserving their core features. As seen earlier, Section 14 of the Act, 2003, provides that any supply licensee under the Reforms Act shall be deemed to be a licensee under the Act, 2003 for such period as stipulated in the licence and the provisions of the Reforms Act in respect of such licence shall apply for one year from the date of commencement of the Act, 2003, i.e. up to 9 June 2004 in the absence of any earlier period specified by the Commission, which was not done in the present case. Therefore, provisions of the Supply Code, 2002 continued to operate on the above four distribution companies also till 9 June 2004, as condition of licence. Subsequent to 9 June 2004, only the provisions of the Reforms Act and accordingly the Supply Code, 2002 applied with respect to above supply licensees, which were not inconsistent with the provisions of the Act, 2003 along with general application of Section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

10. The Electricity Supply Code, 2005 has been notified in accordance with Sections 176 and 183 of the Act, 2003 and all other enabling powers in this behalf. The Supply Code, 2005 is applicable to all distribution licensees in their respective licensed areas in the State. The Code enlists obligations of the licensee and consumers vis-a-vis each other and specifies the set of practices to provide efficient, cost-effective and consumer friendly service to the consumers. It, inter-alia, deals with the procedure for new connection and for enhancement or reduction of load; recovery of electricity charges and intervals for billing of electricity charges; disconnection, re-connection and restoration of supply of electricity; tampering, distress or damage to electrical plant, electric lines or meter; entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter and/or for replacing, altering or maintaining electric lines or electrical plant or meter; practices relating to payment of bills, consumer metering and assessment of energy; standards of performance for the licensee, and procedure for redressal of consumer grievances. Supply Code being very exhaustive and covering all fields, it appears and contended on behalf of the respondents, no need was felt to frame regulations, as contemplated under Section 47 of the Act, 2003. Para 4.20 of the Supply Code, 2005 provides for security deposit. We are concerned with clause (i) thereof, which provides that a distribution licensee shall not be entitled to require security in pursuance of this section, if the person requiring the supply is

prepared to take the supply through a prepaid meter, as and when distribution licensee provides a choice to consumer to opt for supply through prepaid meters.

The respondent - distribution company has filed a counter affidavit opposing the prayers made in the writ petition. They have stated in detail, the background against which they raised the impugned demand for the financial year 2015-16. The act of making such a demand in the face of the provisions of Section 47(5) of Act, 2003 is under challenge in this group of petitions. Since the amount mentioned in the demand notice is not in dispute, we are not entering into the fact as how the amount mentioned in the impugned demand notice is arrived at. It is specifically stated by respondent no.4 that according to the agreement entered into between them and the petitioners, the petitioners are bound by all the terms and conditions of Supply Code, 2005 and as provided for in Para 4.20 of Supply Code, 2005, a consumer can only apply for a prepaid meter as and when a distribution licensee provides a choice to a consumer to opt for supply through prepaid meters. In other words, it is stated that a person can apply or opt for a prepaid meter only when such meters are made available by the distribution licensee and not otherwise. They have also specifically stated that prepaid meters for HT consumers are neither manufactured in India nor available for installation, as contemplated by sub-section (5) of Section 47 of Act, 2003. The petitioners, in their reply to the counter affidavit, after referring to Sections 55, 73, 177 and Section 47 of Act, 2003, have stated that a distribution licensee is not entitled to demand any security if the person requiring supply is prepared to take supply through prepaid meter. They have tried to justify their challenge to the demand notices and the provisions contained in Para 4.20 of the Supply Code, 2005. They have not controverted the statement on affidavit made by the respondents that HT meters are available to be installed at the request of consumers under subsection (5) of Section 47 of the Act, 2003.

11. We have heard learned counsel for the parties and have gone through the entire material placed before the Court, in particular the provisions of the Act, 2003 and the Supply Code, 2005. We do not propose to make a reference to every individual provision contained either in the Act, 2003 or in the Supply Code, 2005, since that may not be necessary for addressing the questions formulated by us. It is clear from the scheme of the Act, that it recognises the fact that electricity is an essential service and that the demand is more than the supply and there is larger public interest in ensuring proper distribution of electricity. Cumulative reading of all the provisions in the Act, 2003, in particular Part VI thereof with which we are mainly concerned, shows the intent of Parliament, namely the establishment of an efficient supply network to every nook and corner of the country so that electricity is available to all on demand. The Act mandates supply of electricity on demand by the consumer. Efficient supply of electricity pre-supposes the financial viability of the licensee. The distribution licensee draws electricity from the generator on payment of costs levied by the generator. It puts in place and establishes all the infrastructure facilities for drawing electricity from the generators and supplies the same to the

end user. The consumer can request for supply of electricity from the licensee and once such a request is made, subject to fulfilment of all legal requirements, electricity has to be supplied and various provisions of the Act and Regulations made there under would govern the relationship between the licensee and the consumer. However, it is purely a commercial transaction between the licensee and consumer. When a supplier agrees to supply electricity, it is permissible for the supplier to impose restrictions subject of course to the various provisions of the Act and the Regulations. In short, Part VI of the Act deals with the supply of electricity and the competency of the distribution licensee to demand amounts from consumers for various purposes including demand of security. This Chapter vests power in the distribution licensee to levy charges for the electricity supplied, to recover charges incurred and to demand a security deposit for the electricity supplied. Electricity is not a free commodity. It requires to be purchased from the generator and the consumer has to pay for what he consumes. From out of the charges levied on the consumer, the licensee generates revenue. Ordinarily, whenever any person purchases a commodity, he has to pay the value thereof upfront. Insofar as electricity supply is concerned, the licensee supplies electricity on credit basis and assesses the electricity consumed during the given period and recovers the charges. The distribution companies ordinarily extend one month credit period and by statutory fiat, the consumer gets one more month to pay the amount for the electricity consumed. In the post-consumption pay system, the licensee runs the risk of recovery of his dues and has to go through rigorous legal procedures. The stark reality is, that there are innumerable defaulters. Delay in payment may choke the licensee and can paralyse the electricity distribution system. Thus, to safeguard his interest and in the larger public interest, licensee can demand security deposit for the electricity supplied. Section 47 recognises this right in no uncertain terms.

Section 47 of the Act, 2003 empowers a distribution licensee requiring any person, who seeks a supply of electricity in pursuance of Section 43, to give him reasonable security, as may be determined by regulations. It also empowers the distribution licensee to refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the person, requiring a supply of electricity, fails to give such security. We are not referring to Section 47 in detail, since it has already been reproduced in the earlier part of the judgment. Sub-section (5) of Section 47, however, requires special attention since it carves out an exception to the provisions contained in Section 47 (1) to (4) and so as to understand the intent of the legislature in carving out such an exception. Section 43, for our purpose, provides that a licensee, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application.

12. Section 55 of the Act, 2003 also needs special mention, which deals with the use, etc., of meters. Providing of a correct meter in accordance with the regulations to be made in that behalf, is the obligation of the licensee who may require the consumer to give security for the price of a meter and enter into an

agreement for the hire thereof, unless the consumer elects to purchase a meter. Installation of a meter is necessary for proper accounting and audit in the generation, transmission and distribution or trading of electricity. The Central Electricity Authority, referred to in sub-section (1) of Section 70, is obliged to direct installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary. This provision further provides that if a person makes default in complying with the provisions made in that behalf in this section or the regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.

13. From a perusal of Sections 47 and 55 of the Act, 2003, it is clear that supply of electricity is distinct from providing of a meter. Provisions of Section 55, which deal with the use of meters, only enables the supplier to know how much electricity is consumed by a consumer in a block period and based on the consumption recorded, as per the tariff already determined, collect the consumption charges from the consumer. It also enables the consumer to know the amount of electricity consumed by him. It is not in dispute that electric meters are provided. As per the consumer system prevailing, electricity is supplied through ordinary meters and consumption charges are levied and collected based on the electricity consumed during the block period. Section 55 imposes a mandate on the licensee to supply electricity through installation of "a correct meter". This provision does not provide for prepaid meters but only obliges to provide a correct meter. This is only to ensure that there is proper accounting and auditing of distribution of electricity.

14. It is true that sub-section (5) of Section 47 provides that a distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1), if the person requiring the supply is prepared to take the supply through a prepaid meter. This, by itself, does not mandate or make it obligatory for a distribution licensee to provide such a meter the moment it is requested for or demanded by the consumer. From a plain reading of subsection (5) of Section 47, it is clear that it gives an option to the consumer to opt for a prepaid meter and does not mandate or obligate a distribution licensee to install/provide the same and not to make any demand of the security referred to in sub-section (1) of Section 47 and refund such security on the request of a person who gave such security the moment the consumer makes a request or opts for a pre-payment meter, irrespective of the fact as to whether such a meter is available or till it is installed. The provision in sub-section (5) of Section 47 has to be read and understood to mean that if prepaid meters for HT consumption are available with the licensee or in the market and the consumer requests for supply of electricity through prepaid meters, the licensee has to provide meters and in such a case, a licensee cannot refuse to provide the meter and demand for security deposit.

Provisions contained in sub-section (5) of Section 47 should be read in conjunction with all other provisions of the Act, in particular Section 55. Availability of efficient prepaid meters is a sine que non for enforcing this provision.

15. We would also like to consider the words "subject to" in sub-section (1) of Section 47 of the Act, 2003 and so also the word "prepared" in sub-section (5) thereof. The submission made on behalf of the petitioners that the words "subject to" is a clear indication that the provisions of sub-sections (1) and (2) would be subservient to Section 5, and that the provisions of sub-section (5) would not control but also override the provisions of sub-sections (1) and (2), in our opinion, deserves to be rejected outright. Learned counsel appearing for the petitioners, in support of these submissions, relied upon the principles enunciated by the Supreme Court in *Commissioner of Central Excise, Bhavnagar v. Saurashtra Chemicals Ltd*, (2007) 10 SCC 352 and *United India Insurance Co Ltd v. Lehu & Ors*, (2003) 3 SCC 338.

16. Firstly, the words "subject to" are used in sub-section (1) to mandate that the reasonable security which a distribution licensee would be entitled to demand would have to be determined in accordance with the provisions of Section 47. In fact, the words used are "subject to the provisions of this section" and not "subject to the provisions of sub section (5)". This is a clear indication of the legislative intent that the formulation and determination of security would have to be made in accordance with the provisions of Section 47 read as a whole. It becomes relevant to note that sub-sections (1) and (2) are not made subject to the provisions of sub-section (5). We may also note that in *Saurashtra Chemicals*, a judgment relied upon by the learned counsel for the petitioner, the Supreme Court had referred to the manner in which the expression "subject to" had been defined by the Black's Law Dictionary. We extract paragraph 13, which reads as under:

"13. A beneficent statute may have to be considered liberally but where a statute does not admit of more than one interpretation, literal interpretation must be resorted to. The provision allows taking of credit but the same is circumscribed by the condition as is apparent from the use of the words "subject to" and is limited to an amount not exceeding 50% of the duty paid on such capital goods. The term "subject to" in the context assumes some importance. In *Ashok Leyland Ltd. v. State of T.N.* (2004) 3 SCC 1 this Court held: (SCC p. 36, para 79)

" 79. ... "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes."

This Court further noticed the dictionary meaning of "subject to" stating: (SCC p. 38, paras 92-93)

"92. Furthermore, the expression "subject to" must be given effect to.

93. In Black's Law Dictionary, 5th Edn. at p. 1278, the expression "Subject to"

has been defined as under :

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *Homan v. Employers Reinsurance Corp'n.* 345 Mo 650 : 136 SW 2d 289, 302"

(See also *S.N. Chandrashekar v. State of Karnataka* (2006) 3 SCC 208.)"

17. As would be evident from the meaning ascribed to the said expression, it is defined to also mean "governed or affected by" and "provided". This, in our considered view, is in accord with what we have held herein above, namely, that the use of the expression "subject to" was primarily to underline the legislative intent that the fixation of reasonable security would have to be determined under the canopy of section 47 as a whole.

18. The word "prepared" in sub-section (5), according to the petitioners, is clearly indicative of the preparedness of the consumer to take the supply as being the crucial factor for determining whether additional security was liable to be demanded or not. It was further contended that as long as the consumer was prepared to take the supply through a pre payment meter, no other consideration was relevant and, as a consequence of such an option being exercised by the consumer, the distribution licensee stood denuded of the jurisdiction and authority to demand or require security. This submission is not liable to be countenanced at all as we have already held that the sine qua non for the applicability of sub-section (5) is the availability of efficient prepayment meters. We have already noted the uncontroverted and admitted state of fact that prepayment meters for HT consumers are not available. In view thereof, the mere preparedness of the consumer to obtain supply through a pre payment meter is of no consequence. In fact, as one reads sub-section (5), it is more than apparent that the preparedness of the consumer is itself dependent upon the availability of prepayment meters. Since admittedly, pre payment meters are not available insofar as HT consumers are concerned, this submission of the petitioners is also liable to fail.

19. Next we would like to consider the submission that the reasonable security which a distribution licensee was entitled to demand from consumer was to be determined by regulation, based upon the use of the expression "as may be determined by regulation" in sub-section (1) of Section 47. In support of this submission, it was further urged that Section 181, which empowers the State Commission to frame regulations, itself has hedged by the use of the phrase "to carry out the provisions of the Act". Relying upon the principles enunciated in *Chandra Kumar Shah & Anr v. The District Judge & Ors*, AIR 1976 (All) 328 and *Bharathidasan University & Anr v. All-India Council for Technical Education & Ors*, (2001) 8 SCC 676, it was further submitted that power to frame such regulations or rules could not be read as being a source of authority to enact independent legislation or to impose obligations which were not otherwise envisaged by the Act. This contention was presumably raised and urged with reference to Clause

4.20 of the Supply Code, 2005. In our opinion, we need not examine this contention in detail for more than one reason. Firstly, as stated earlier, Supply Code, 2005 takes care of all the situations that could be taken care by regulations and, secondly, no such challenge is raised in the writ petitions. It is pertinent to note that the petitioners do not deny their liability to give reasonable security as contemplated by Section 47. In other words, they have not challenged demand of security as contemplated under sub-section (1) of Section 47 of the Act, 2003. Secondly, in all the writ petitions, there is no assertion to the effect that the imposition of additional security is bad or is rendered without authority of law on account of having been imposed without the framing of regulations. That apart, such a contention has been raised for the first time only in the course of oral submissions. We may also note, at the cost of repetition, that the challenge is specifically raised only to sub-clause (1) of Clause 4.20 of the Supply Code, 2005. Sub-clause (1) of the Supply Code, 2005 relates to a prohibition on a distribution licensee demanding security where a person requires the supply to be made through a pre payment meter subject to the distribution licensee providing a choice to a consumer to opt for supply through such a meter. This clearly indicates that there was no challenge to the demand of security or additional security, as observed earlier, on the ground that the State Commission has failed to frame regulations under Section 181 for the purposes of determining security. The entire challenge was based solely upon the contention that once the consumer had opted for supply through a pre payment meter, the distribution licensee consequently could not demand any security. Submission that Clause 4.20 of the Supply Code, 2005 places an additional obligation or fetter upon the right of a consumer, is also not liable to be countenanced, since the availability of pre payment meter is a prerequisite to the consumer exercising the option of obtaining supply through such a meter. We will deal with this further a little later. Clause 4.20 travels no further than the above position which evidently flows from sub-section (5). The linking of the exercise of an option by the consumer to the distribution licensee making available such meters is, therefore, not ultra vires Section 47. We proceed to record our further reasons for taking such a view insofar as Clause 4.20, to the extent it is under challenge, is concerned.

20. The provisions contained in clause (I) of para 4.20 of the Supply Code, 2005 is not independent of the provisions contained in Sections 47 and 55 of the Act, 2003 but it is in conjunction with these provisions of the Act. It does not independently gives any power to the distribution licensee whether to provide or not to provide prepaid meter but it only states that as and when a distribution licensee provides a choice to a consumer to opt for supply through prepaid meter, such a meter would be supplied at the request of the consumer. If the prepaid meter is not available, then the question of giving the option as contemplated by sub-section (5) of Section 47 does not arise. The language employed in sub-section (5) makes it further clear that a distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section

(1) if the person requiring the supply is prepared to take the supply through a prepaid meter. Thus, the availability and installation of a prepaid meter on the request of a consumer is necessary. Section 55 does not provide for installation of a prepaid meter as such and it simply states that no licensee shall supply electricity except through installation of a "correct meter" in accordance with the regulations to be made in this behalf by the Authority, i.e. Central Electricity Authority, referred to sub-section (1) of Section 70. Thus, as noticed earlier, even on a plain reading of Section 47 (5) of the Act, it cannot be said that an obligation rests on the distribution licensee to provide electricity without demanding security deposit the moment the HT consumer makes a request for supply of prepaid meter. It is not in dispute that prepaid meters are not available in the market. Thus, this regulation only furthers the objective underlying in Section 47 (5) of the Act, 2003. We, therefore, do not find that the provisions contained in Para 4.20 (I) of the Supply Code, 2005 are ultra vires the provisions contained in Section 47 (5) of the Act, 2003. The challenge to Para 4.20 (I) deserves to be rejected outright. We also do not see any illegality in the demand of additional security deposit made by respondent no.3 - distribution company in view of the increase in consumption of power over the originally estimated quantity or based on anticipated demand for power supply for two months.

21. Further, we find ourselves unable to sustain the challenge to the validity of Clause 4.20 and the demand of security on an essentially fundamental ground also. The reason why sub section (5) injuncts the distribution licensee from demanding additional security is the presupposition of supply being made through a pre payment meter. In the case of a pre payment meter, the consumer would have already paid for the electricity that he is likely to consume. There is, therefore, no reason for the distribution licensee to demand security in such a situation. The demand of security is primarily aimed at securing the interest of the distribution licensee who has already incurred huge capital expenditure in establishing the requisite infrastructure for supply of electricity and has also paid the generating company for electricity purchased. It is to bridge the gap between the expenditure already incurred and receipt of revenue from the consumer that the distribution licensee seeks and demands security to safeguard its interest. However since in the case of a pre payment meter, the consumer pays for the electricity likely to be consumed in advance, the legislature thought it fit to absolve such consumers from the liability to pay security. However in the absence of a pre payment meter, the consumer does not pay any moneys in advance. It is for this reason that the demand of security in such a case is clearly justified and does not fall foul of the provisions of the Act.

22. We at the cost of repetition further note that none of the petitioners neither challenged the quantum of additional security demanded by the distribution licensees nor did they urge any other contention in support of their challenge to either the validity of Clause 4.20 or the issue of supply of a pre payment meter.

23. As submitted by learned counsel for the respondents, as of today, prepaid

meters are either not manufactured and, in any case, they are not available in the market and, therefore, the question of installation of such meters would not arise. It is not in dispute that prepaid meters are available for LT consumers and on demand said meters are provided, whereas prepaid meters with proven technology for HT consumers are not available in the market and, therefore, they cannot be provided even if demand is made. That, in any case, does not mean that till the meters are manufactured and installed, the licensee cannot demand additional security even if the consumption of electricity is increased. If, the interpretation, as is made by learned counsel for the parties is accepted, perhaps that would put the licensee and in turn the Distribution Company under great stress and in effect it may choke the licensee and paralyse the electricity distribution system. We are, therefore, of the opinion that unless prepaid meters are available for supply of electricity to HT consumers, there is no obligation on the licensee to supply such meters. That, in our opinion, is the intent of the legislature while inserting sub-section (5) of Section 47 in the Act, 2003. We may also observe that it is high time for the licensee to take steps to procure HT pre payment meters so as to meet the demand of HT consumers.

24. Similar questions fell for consideration before the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in *Sarwottam Ispat Ltd v. Southern Power Distribution Company of Telengana Ltd & Ors*, 2016 (6) ALD 162. A Division Bench, to which one of us (Dilip B Bhosale, CJ) was a Member, after considering the relevant provisions of the Act, 2003, in paragraph 34, observed thus:

"34. Section 47 (2) enables the distribution licensee to demand additional security, if the security provided by the consumer is invalid or insufficient. Subsection (3) further vests power in the licensee to stop supply of electricity if the additional amount demanded is not paid. When this provision vests power in the licensee, a demand made by the licensee in terms thereof cannot be held as arbitrary or illegal. As long as prepaid meters are not installed, it is mandatory for the consumers to pay the security deposit as demanded by the licensee. Therefore, waiving of security deposit merely because a request for provision of HT pre-paid meter is made when no such meters are available does not arise. Such a request is contrary to statutory scheme and liable to be rejected. It is not the case of the petitioners that the amount of deposit demanded is in excess of what is required by the tariff determined by the Regulatory Commission. They cannot insist for supply of electricity without complying with the demand for additional security deposit. Section 47 does not envisage waiver of security deposit nor prescribe alternative mode of providing security, such as bank guarantee. There is no ambiguity in the provision. Thus, there is no scope for playing in the joints to grant the relief of waiver/ reduction of deposit. When the statute vests power in the licensee to demand security deposit and licensee exercises such power and no provision is made for waiver/reduction/alternative mode of providing security, it is not permissible for this Court, in exercise of equity jurisdiction under Article 226 of the constitution of India, to direct the

distribution licensee to dispense with payment of security deposit or to furnish bank guarantee or reduce the security deposit demanded. Contrary to the statutory mandate, no direction can be issued. When the language of the provision is plain, simple and clear, it is not permissible for the Court to interpret the same in different manner or issue directions contrary to the statutory mandate. No case is made out by petitioners to wave additional security deposit."

25. We find ourselves in agreement with the view taken by the High Court of Judicature at Hyderabad.

Accordingly and for the reasons noted above, we find no merit in the challenge laid in this batch of writ petitions to the provisions of Clause 4.20 of the Electricity Supply Code, 2005, as framed by the U P Electricity Regulatory Commission or to the demand of additional security by the distribution licensees.

The writ petitions consequently fail and are dismissed. All interim orders granted shall in consequence stand discharged.