

(1994) 04 KAR CK 0025

In the Karnataka High Court

Case No : Writ Appeals No's. 165 and 294 of 1994 C/w W.A. No's. 3355, 3551 and 3729 of 1993

Shreejee Plastics and

APPELLANT

Vs

The Karnataka Electricity Board and Another

RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Electricity (Supply) Act, 1948 — Section 39, 44

Citation : AIR 1995 Kar 57 : (1994) ILR (Kar) 1151 : (1994) 3 KarLJ 447

Hon'ble Judges : S.B. Majmudar, C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : A.V. Albal, M. Aswathanarajana Reddy, Jayakumar S. Patil Paras Jain, for the Appellant; S.G. Sundaraswamy and N.K. Gupta, for the Respondent

Judgement

S. B. Majmudar, C. J.

1. In this group of writ appeals a common question is posed for our consideration namely, whether the Karnataka Electricity Board functioning under the provisions of the Electricity Supply Act 1948 and the Karnataka Electricity Board Electricity Supply Regulations 1988 is required to follow the modicum of enquiry and for that purpose to hear the consumer of electricity when it is alleged that the consumer Or his agent or servant has committed or was committing an offence in terms of Ss. 39, 44 or any other provisions of the Act or the regulations and especially when the consumer is alleged to have indulged in dishonest abstraction, use, consumption of Electricity or interference with the metering Equipment or Accessories and whether in such a case the Board can estimate the value of electricity thus abstracted, used or diverted without hearing the consumer and only remedy available to the consumer is to prefer an appeal under the relevant regulations against such an order of Board's authorised officer?

2. A few relevant facts leading to these proceedings need be noted at the outset to highlight the nature of the controversy posed for our consideration.

3. The appellants are the consumers of Electricity in this State and they are maintaining meters at their respective places where electricity connection is given by the Board and the meters are sealed by the Board as per the Rules and Regulations, governing the supply of such electricity to the consumers.

4. So far as appellant in Writ Appeal No. 165/94 is concerned, it is aggrieved by a bill followed by notice marked as Annexure-A and B issued on 24-8-1987 by the Board demanding Rs. 2,22,787/- on the ground that on inspection dated 14-8-1987 along with M.T. Division Staff Executive Engineer (Electricity), TSC., Karnataka Electricity Board reported that the seal provided to the energy meter was fake one and therefore the consumer had indulged in theft of electrical energy and hence the aforesaid bills were raised. The appellant filed the writ petition in this Court being Writ Petition No. 12702/87. The learned single Judge, initially issued rule and granted interim stay of the recovery on the appellant depositing 10% of the amount. Ultimately, when the writ petition came up for final hearing, the learned single Judge by his order dated 12-10-1993 held that the appellant should prefer an appeal under Regulation 46 of the relevant regulations of the Board and that the writ petition deserves to be disposed of in the light of the aforesaid direction. That has resulted in this appeal by the appellant.

5. Writ Appeal No. 294/94 is preferred by the appellant industry being aggrieved by the demand of Rs. 91,040 from the appellant as per the bill Annexure B dated 14-9-1987 alleging that Executive Engineer (Electricity), Technical Audit Cell, K.E.B., Bangalore reported by letter dated 4-9-1987 that on inspection of the appellant's installation, it was found that the main cover seal on the energy meter was a fake one and thereby it was possible to gain easy access to the registering mechanism of the meter to record the consumption of electricity. A mahazar was drawn in the presence of one R. Ashok Kumar, who was present at that time and therefore, the aforesaid bill was issued calling upon the appellant to pay immediately the said amount otherwise, installation would be disconnected without notice. Appellant preferred writ petition No. 14585/87 in this Court. The learned single Judge granted an ad interim stay of the payment subject to the appellant paying 25% of the demand. On that basis, reconnection was effected in favour of the appellant. Ultimately, the learned single Judge by order dated 5-12-1993 disposed of the writ petition by observing that the appellant can file an appeal within 30 days from the date of receipt of the order against the bill and for that purpose, learned Judge followed his own decision rendered in Nizami Rice Mill Vs. Karnataka Electricity Board, That has resulted in the present appeal by the dissatisfied writ petitioner.

6. In Writ Appeal 3355/93 Nizami Rice Mill has brought in challenge the aforesaid decision of the learned single Judge reported in Nizami Rice Mill Vs. Karnataka Electricity Board, The appellant contends that he is the proprietor of Nizami Rice Mill functioning in Chennapatna in Bangalore Rural District. That the respondent had granted 63 H.P. to run the said Rice Mill. On 16-7-1993 the authorities of the

respondent electricity Board inspected the premises of the Rice Mill and opined that the appellant had been consuming the electricity after tampering with meter. Thus he was guilty of theft of electricity. Appellant was served bill dated 23-7-1993 for Rs. 1,43,419/-being the alleged back-billing charges. This bill was served on 24-7-1993 and on 29-7-1993 appellant preferred writ petition No. 27172/93 challenging the said demand. The appellant also sought for restoration of electricity supply to his mill. Pending writ petition stay of the demand was granted and reconnection of electricity was ordered subject to appellant paying part of the demanded amount as directed by the learned single Judge. Ultimately, the writ petition came to be disposed of by the learned single Judge on the ground that the appellant had a remedy by way of appeal under Regulation 46 of the Regulations and it is for the appellate authority to consider the grievance of the petitioner. The writ petition was accordingly disposed of and rule was discharged. That is how the appellant has filed the present appeal.

7. Writ Appeal No. 3551/93 is filed by the appellant who is running a small scale industry producing bakery items such as bread, biscuits, etc., in Arasikere in the name of Sagar Food Products. It is his case that on 1-4-1993 at about 4.30 p.m. during his absence, respondent No. 2 accompanied by the officers of Vigilance Cell conducted raid-cum-inspection without notice to the appellant. That pursuant to the said inspection, appellant's electric connection was cut off and a criminal complaint was also filed against the appellant. The case of the respondents is that the seal fixed to the main cover is fake seal and therefore there is theft of electrical energy. Appellant was served a demand notice dated 19-4-1993 demanding a sum of Rs.3,33,944/-being the back-billing in view of the alleged theft of electrical engery. The appellant challenged the said demand under Annexure-D and also sought for restoration of power supply by filing a writ petition No. 12792/93 in this Court. Pending the writ petition, the demand was stayed directing resumption of electricity to the appellant immediately and thereafter the matter was kept pending. Ultimately, the writ petition came to be dismissed by the learned single Judge following his own decision in Nizami Rice Mill Vs. Karnataka Electricity Board, The appellant was relegated to the remedy by filing an appeal under Regulation 46. That is how, the appellant is before this Court in this appeal.

8. In Writ Appeal No. 3729/93 the appellant is running its factory in Nagavara. An electric connection is installed at the factory premises. It is the case of the appellant that on 7-12-1989, Technical Audit Cell members visited the factory premises and found that the meter in the premises was not genuine and was not recording the consumption properly. Pursuant to the said inspection, a back-bill was raised on 16-12-1989 demanding a sum of Rs.7,41,524/- vide Annexure E to the writ petition No. 23352/89 filed by the appellant. The appellant in the aforesaid writ petition challenged the said bill. The learned single Judge by his order dated 4-11-1993 disposed of the writ petition. In the writ petition, an ad interim order was granted directing the respondents to reconnect the electric connection and restraining them from enforcing the demand on the appellant

depositing part of the amount as directed by the learned single Judge. Ultimately, the writ petition was disposed by the learned single Judge by holding that the appellant can file an appeal against the said bill within one month and until such time the appeal is disposed of the interim order granted earlier will enure to the benefit of the appellant. It is this order which is the subject matter in this writ appeal.

9. It has been vehemently contended by the learned counsel for the appellants that whenever it is alleged by the Electricity Board that there is theft of electricity by the consumer, a very serious allegation is made against such a consumer. That it results in not only civil liability but also criminal liability and if on such ex parte allegation the bills claiming huge amounts are raised, the same would amount to violation of basic principles of natural justice and therefore, before raising such bills on the allegation of theft of electricity, the consumer should be given a chance of being heard in the matter and a semblance of enquiry, may be summary enquiry, should be, held by the Board before raising such bills. It was submitted that in earlier decisions of learned single Judge of this Court namely, Rajendra Babu, J., in Writ Petition No. 17873/88 decided on 30-10-1990, W.P.No. 13992/87 decided on 13-2-1991 and W.P. No. 56/91 decided on 31-1-1991 a clear view was taken that before raising such bills on the allegation of theft of electricity, the consumer concerned should be heard otherwise it would amount to violation of principles of natural justice. Placing reliance on the decision of the Supreme Court in *Municipal Corporation of Delhi v. M/s Ajanja Iron & Steel Company (Pvt.) Ltd.* AIR 1990 SC 882, it was also submitted that before disconnecting the electric supply on the allegation of theft of electricity by the concerned consumer, a reasonable notice should be given to the consumer so that he can have his say in the matter. And if this is not done, it would also amount to violation of basic principles of natural justice. That in the present case no such enquiry was either conducted by the Board before disconnecting the electric connections or before raising such huge demands of electricity charges by the impugned bills on the allegations that the appellants consumers were guilty of theft of electricity. Under these circumstances, it was submitted that remedy of appeal is not a remedy at all in the eye of law and the learned Judges were in error in passing the impugned orders by relegating the appellants to the remedy of appeal under Regulation 46 of the Regulations.

10. On the other hand, the learned Senior Counsel, Sri S.G. Sundara Swamy appearing for in respondent submitted that as per the Karnataka Electricity Board Electric Supply Regulations 1988, the Board has got emergent power under Regulation 44,07(c) to disconnect the installation forthwith where a consumer, his agent or servant is found committing any of the offences mentioned in the regulation, which would include offence of theft of electricity and that even a post decision action hearing also would suffice and would meet the requirement of the principles of natural justice. In support of that contention, he relied upon the decisions of the Supreme Court in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, and in *R.S. Dass Ors. Vs. Union of India (UOI) and Others*,

and it was also submitted that the law laid down by Shivashankar Bhat, J. in *Nizami Rice Mill Vs. Karnataka Electricity Board*, supra has been approved by the Division Bench of this Court in Writ Appeal No. 23 34/93, consisting of Ramakrishna, and S. Venkataraman, JJ., and hence all these appeals deserve to be dismissed in the light of that decision including the appeal which challenges the very same decision namely the Writ Appeal Number 3355/93. It was also contended by Sri Sundera Swamy that on the facts of these cases, when it was found on spot inspection that the meters were tampered with and seals were fake, mahazars were drawn and when the appellants' representatives were very much present there and accepted that position, no further enquiry is required to be made under Regulation 44.07(a) of the Regulations and the computation of the illegally abstracted electricity was merely an arithmetical process which called for no enquiry after hearing the consumers and such a bill once raised could be challenged by way of appeal under Regulation 46.01 and in an appeal the appellants can have all their contentions and pleas. It was also contended the decision in *Municipal Corporation of Delhi Vs. M/s. Ajanta Iron and Steel Company (Pvt.) Ltd.*, cannot be applied to the facts of the present case as under the Delhi Regulations with which the Supreme Court was concerned, there was an expressed provision in the terms of the licence themselves and also under the regulations governing the Delhi Electricity Board that 24 hours notice had to be given to the consumer before cutting off the electric supply on the ground of theft. In the present case, the Regulation with which we are concerned is differently worded and in Regulation 44.07(c) that the Board has been given a right to disconnect the installation forthwith without any notice and consequently no case is made out by the appellants for interference by this Court in these appeals.

11. In order to appreciate the aforesaid rival contentions, it is necessary to have a look at a statutory scheme governing the present controversy.

12. It is not in dispute that the appellants are consumers of Electricity Supplied by respondent, Karnataka Electricity Board. The Electricity Board functions under the Indian Electricity Act. 1910 and the Electricity Supply Act, 1948. As a licensee functioning under the said Acts, the respondent Electricity Board is enjoined the duty of generating the electricity and supplying the same to the various consumers. It is also not in dispute that at the premises of the concerned consumers, meters are installed under the seals of the Board for recording the correct consumption of electricity at the said premises. In exercise of the powers vested in the respondent-Board under Sections 49. and 79(j) of the Electricity Supply Act, 1948, the respondent-Board has made regulations of 1988 called, Karnataka Electricity Board Electric Supply Regulations 1988 (hereinafter referred to as "Regulations" for short). Regulation 44.07 is relevant for our present purpose. It reads as under;

44.07. Dishonest Abstraction/Use/ Consumption of Electricity or Interference with the Metering Equipment or Accessories.

(a) Where it is prima facie established to the satisfaction of the authorised Officer of the Board that the consumer or his agent, servant, etc., has committed/is committing an offence in terms of Sections 39, 44 or of any other provision of the Act or these Regulations, such Officer shall estimate the value of the electricity thus abstracted, used or wasted or diverted, in accordance with the calculation table prescribed from time to time, for a period six months or for such other period as may be deemed justified in the circumstances of any given case at thrice the rate of tariff applicable to such category of installation or at thrice the normal tariff applicable to the purpose for which the energy is abstracted, used or consumed or wasted or diverted, whichever is higher and demand and collect the same by including the same in the next bill or in a separate bill. Such amount shall be deemed to be arrears of electricity charges.

(b) Neither failure to launch a prosecution nor acquittal of the consumer in any criminal case launched against him for committal of any offence under Sections 39 and 44 or such other provision, on the ground other than that the prosecution case is false, shall bar the proceedings under the above provision.

(c) Where any consumer or his agent or servant, etc., is was found committing any of the offence mentioned above, Board reserves the right to disconnect the installation forthwith ad without notice. However, the supply may be restored at the discretion of the Board if the consumer pays the deterrent charges demanded and or takes such other action as may be directed to by the Board.

(d) If any consumer obstructs Board's officer from inspecting the premises at any time, to which supply is being given, the authorised officer of the Board may disconnect the supply forthwith and without-notice and such obstruction shall be a prima facie proof of prejudicial use of electricity and shall make the consumer liable to pay the deterrent charges as specified above.

Regulation 46 deals with appeals. Regulation 46.01 and 46.02 are relevant for our present purpose. They read as under:

46.01. Any consumer aggrieved by claims made by the Board on grounds of prejudicial use of ppower or on account of faulty metering equipment or due to any supplemental claims, may file an appeal to the prescribed appellate authority within one month form the date of bill of claims, under intimation to the office of issue, by making payment as indicated below:

(a) Dishonest abstraction/

consumption/use

50% of the claims or more

(b) Other cases 25% of the claims or more

46.02. The appellate authority may reduce the amount to be deposited by the consumer upto the extent prescribed by the Board from time to time, before admitting the appeal.

The consumer is liable to pay interest on the amount finally decided by the appellate authority (less the amount paid by the consumer before the date, if any) from the due date of the original claim.

13. Appellants contend that as per the aforesaid Regulations the consumers may have a right of appeal under Regulation 46.01 against the bill raised by the Electricity Board. However, that does not write down the requirements for the Board to hold at least a summary enquiry before deciding under Regulation 44.07(a) that the concerned consumer is guilty of theft of electricity. So far as this contention is concerned, learned Senior Counsel Sri Sundaraswamy for the Board vehemently contended that when the meter, which is within the premises of the consumers and which was bearing the seal of the Board is found on spot inspection to be having a fake seal, it necessarily follows that the meter was tampered with and electricity was dishonestly abstracted by the consumer. That mahazars are drawn on spot and appellants' authorised officers who are on spot do not controvert what is found on spot. Under these circumstances, it would be an exercise in futility to hold further enquiry before raising any bill under Regulation 44.07(a). In our view, the aforesaid contention of Sri Sundaraswamy cannot be accepted for obvious reasons. Justice Shivashankar Bhat, J., in *Nizami Rice Mill Vs. Karnataka Electricity Board*, has taken the view that a summary enquiry is contemplated under Regulation 44.07(a) before raising a demand. And that decision is accepted by the respondent Board by not challenging higher up. On the contrary, the law laid down in that decision is approved by the Division Bench of this Court in Writ Appeal No. 2334/93 supra. We may in this connection refer to what is held by Shivashankar Bhat, J., in *Nizami Rice Mill's* case at paragraph 7 of the report. It reads as under:

"7. If 'prima facie' it is shown that there was a theft of electrical energy, an immediate action is called for to safeguard the revenue of the Board; sufficient guidance is found in Regn. 44.07(a) as to how the amount due shall have to be computed. The formation of the opinion that prima facie there has been an offence falling within the said regulation, committed by the consumer, involves a process of hearing the consumer, but that hearing is not to be through a detailed procedure; it is a summary process; consumer should be made known of the allegation against him with the basis for the suspicion against him and an opportunity to the consumer to express his comments or explanation thereto. At this stage an elaborate hearing is not envisaged. Nature of the charge and the material in support of the same, if disclosed to the consumer, with an opportunity to dispel the prima facie material, will meet the situation. The charge u/s 39 of the Indian electricity Act, 1910, pertains to the theft of energy. Section 44 pertains to interference with the meter and the improper use of energy; consumer should be made aware of the reason for the prima facie view that he has committed the offence referred in the Regulation covered by these provisions, so that the consumer may point out the fallacy in the inference drawn by the authority".

This very decision is approved by the Division Bench of this Court in Writ Appeal No. 2334/93 on 20-10-1993 where M. Rama-krishna, J., speaking for the Bench have made the following observations in this connection in para 7 of the report.

"7. Indeed, it is also brought to our notice that subsequent to the order under appeal, the learned single Judge in Nizami Rice Mill Vs. Karnataka Electricity Board, dealing with the similar question with reference to the several authorities and the scope of Regulation 44 of the K.E.B. held against the consumer. Therefore, in view of the law laid down in Nizami Rice Mill's case, we are of the view that there is no need to go into the question in this writ appeal".

Even otherwise in our view, when there is an allegation of theft of electricity said to have been committed by the consumer by putting up a fake seal after removing the original seals of the electricity Board and which allegation would also involve liability for criminal prosecution, the authorised officer of the Board has to be satisfied in this connection after hearing the version of the consumer. He cannot take an ex parte decision merely based on the mahazar or spot enquiry. The mahazar or the spot spot enquiry report of the vigilance squad would only furnish the material for the authorised officer to get satisfied on the aspect of the theft of electricity by the consumer. But that by itself would not absolve the authorised officer of the Board from holding at least a summary enquiry, if not a full fledged enquiry. In fact such an obligation squarely flows from the wording of Regulation 44.07(a) itself. The authorised officer has to be satisfied that it is prima facie established that the consumer has committed the alleged abnoxious activity or for that matter theft of electricity at his premises. Even though the satisfaction of the authorised officer may be subjective which has to be based on objective facts and it has to be prima facie established before him that such theft of electricity has taken place at the place of electric installation. For the very- prima facie establishment of such fact, material gathered by the Inspecting Staff by way of mahazar etc., and the report would be only a one side of the version, while the other side version would be supplied by only the consumer who can give his explanation of the matter. It is true that as submitted by Sri Sunderswamy in a case where the consumer admits about such tampering no further enquiry may be necessary. But in none of these cases, with which we are concerned, in these appeals, there is such a clear-cut admission on the part of the consumers themselves. In some cases, the Manager, may have been present at the time of mahazar. In another case, a peon was present. Even if the Manager or peon might not have raised any objection about what was seen on the spot it would not amount to the fact that the consumer himself who is the holder of the connection or his duly authorised agent has admitted about such alleged theft of the electricity by the consumer concerned. Under these circumstances, in our view, the decisions rendered by Rajendra Babu, J., in writ petition No. 17873/1988 decided on 30-10-1990, W.P.No. 13992/1987 decided on 13-2-1991 and W.P. No. 56/1991 decided on 31-1-1991 to the effect that some enquiry should be held by the authorised officer by giving an opportunity to the consumer to have his say in the matter before raising the bill under

Regulation 44.07(a) and thereafter when the bills are raised by rejecting the objections of the consumers, appeal can be preferred under Regulation 46.07 by a dissatisfied consumer, can be said to be rendered in consonance with the basic principles of natural justice which should pervade such an exercise and cannot be found fault with. However, this aspect has been more highlighted by Shivashankar Bhat, J., in Nizami Rice Mill's case in para. 7 of the report. We concur with the decisions of the learned single Judges in this connection.

14. In our view, Regulation 44.07(a) en-joins upon the authorised officer of the Board while alleging the theft of electricity at the premises of the consumer to at least hold a summary enquiry in the matter by calling upon the consumer concerned to file his objections to the proposed action of the Board at least within a period of 8 days from the issuance of such notice under Regulation 44.07(a). Along with the notice calling for objections, whatever material is sought to be -relied on by the authorised officer has to be furnished to the consumer so that he can effectively controvert the same, if thought fit. Thereafter, the authorised officer may consider the written objections of the consumer in this connection, in the light of the version of the department, which had held the spot inspection, report of such inspection and mahazar if any drawn at spot and then the authorised officer may reach his own satisfaction in the matter and if it is prima facie established before him after considering both these rival versions that there is in fact theft of electricity at the consumer's premises, then only, the authorised officer can estimate the value of the electricity thus abstracted, used or wasted or diverted. In accordance with the calculation table prescribed from time to time, for a period of six months or for such other period as may be deemed justified in the circumstances of any given case at thrice the rate of tariff applicable to such category of installation or at thrice the normal tariff applicable to the purpose for which the energy is abstracted, used or consumed or wasted or diverted as required by Regulation 44.07(a). It is further held that authorised officer is not competent merely On the basis of the spot inspection report and mahazar to raise bill without issuing the aforesaid notice, to the concerned consumer and giving an opportunity to have his say and file his objections in the matter by at least giving him 8 days time from service of such notice on him. We may also further observe that in this connection, it may be open to the authorised officer if he thought it fit to even give a personal hearing to the consumer to substantiate his objections. So far as the consumer is concerned, giving him an opportunity to file his written objections in the matter would meet the requirements of principles of natural justice and fair play in action and the consumer would not be entitled as of right to personal hearing in such summary enquiry as it is only for prima facie establishment of the allegation whether the consumer has committed theft of electricity etc., as laid down by Regulation 44,07-(a). If the aforesaid procedure is followed and thereafter if the bill is raised, then it will be for the consumer to prefer an appeal under Regulation 46.01 and follow the procedure laid down therein. But, without following such a procedure, if the impugned !bill is raised under Regulation

44.07(a), then the consumer cannot, of necessity, be driven to follow the course of filing an appeal under Regulation 46.01, as has been held by the learned single Judges in orders under appeal.

15. So far as question of disconnection of electric power is concerned, the respondents stand on a better footing. It must be noted at the outset that the appellants have not challenged the vires of Regulation 44.07(c). A mere reading of the said Regulation makes it clear that when any consumer or his agent or servant is or has committed any of the offences mentioned in Regulation 44.07(a) meaning thereby if on the spot enquiry it was found that the consumer was committing an offence of theft of electricity or any other offences mentioned in the Regulation, then the Board gets a right to disconnect the installation forthwith and without notice. In view of this statutory regulation, which is binding on both the sides and the legality and vires of which are not challenged by the appellants, it must be held that in such circumstances after spot inspection if it is found that the consumer is alleged to be guilty of such offence of theft of electricity etc., or that the meter is found to be tampered with or lake seals are found to have been fixed on the meter then the Board automatically gets power under such circumstances to forthwith disconnect the electricity supply. No pre-hearing of the consumer in this eventuality is contemplated. The same regulation itself provides about restoration of the electric supply at the discretion of the Board if the consumer pays the deterrent charges demanded for such connection as may be directed by the Board. Therefore, there is a remedy reserved to the consumer to get the connection restored on complying with the conditions as may be laid down by the Board. Reliance placed by the learned Counsel for the appellants on *Municipal Corporation of Delhi Vs. M/s. Ajanta Iron and Steel Company (Pvt.) Ltd.*, supra can be of no avail as in that case there was an agreement between the parties. As per condition 36 regarding supply of electricity, a notice was required to be given to the consumer before disconnecting the electric supply in cases of thefts of electricity. In this connection it was observed by the Supreme Court that the licensee undertaking is performing a public duty and is governed by a special statute and the law also contemplates service of a notice before disconnection of supply of electricity. There is no such provision in the present Regulation 44.07(c). On the contrary, in contingency contemplated therein, the Board can disconnect the installation forthwith and without notice. In this connection also it is observed by the learned single Judge, Shivashankar Bhat, J., in *Nizami Rice Mill Vs. Karnataka Electricity Board*, of the report as follows:

"8. If there is a prima facie material leading to the inference that a consumer is guilty of the offence referred in the Regulation, an immediate action is called for, to prevent the recurrence of the offence. Electricity is a scarce commodity and is essential to the community in all respects. A person found to be prima facie guilty of an offence referred in Regulation 44 cannot be permitted to enjoy the benefit of having the supply of further energy until he is cleared of the charge. However, as an interim measure, he is permitted to have the electricity supplied

to him, on payment of the value of the electricity estimated as per the Regulation 44.07(a) read with Regulation 44.07(c). The consumer has a right of appeal, as per Regulation 46, against an order made under Regulation 44.07; this is conditional on payment of the amounts referred in Regulation 46.01. The appellate authority is empowered to reduce the amount payable under Regulation 46.01, as per Regulation 46.02. The scope of the appeal is quite wide and it is obvious that the consumer may, lead further evidence or place fresh material before the appellate authority in support of his appeal!."

As noted earlier, the decision of the learned single Judge on this aspect has been fully approved by the Division Bench in Writ Appeal No. 2334/93 supra. The said view deserves to be accepted for the simple reason that electricity being a scarce commodity if on spot inspection of consumer's installation reveals that the meter is found to be prima facie tampered with and seals appear to be fake and substituted, if electric connection is not forthwith cut off there is possibility of electricity being further misused or committed theft of subsequently due to such tampering the meter. Under these circumstances, such forthwith disconnection of electricity cannot be said to be unauthorised or improper or contrary to principles of natural justice. As submitted by Sri Sundara Swamy, learned Senior Counsel for the respondent-Board, in such emergent cases, a drastic action may be taken first and thereafter the concerned aggrieved party can be heard in the matter and such a post-decision hearing may also meet the requirement of principles of natural justice. In the decision of the Supreme Court _ in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, Chinnappa Reddy, J. speaking " for the Supreme Court, had to consider the question whether a post decision hearing to be given to the concerned affected party under clause 8-B of the Imports (Control) Order, 1955 framed under Sections 3 and 4A of the Imports and Exports (Control) Act, 1947, would meet the requirements of principles of natural justice. The said clause 8-B, reads as under:

"8-B. power to keep in abeyance applications for licence or allotments of imported goods-- Where any investigation into any of the allegations mentioned in clause 8 is pending against a licensee or importer or any other person, and the Central Government or the Chief Controller of Imports and Exports is satisfied that without ascertaining further details in regard to such allegation, the grant of licence or allotment of imported goods will not be in the public interest, then notwithstanding anything contained in this Order, the Central Government or the Chief Controller of Imports and Exports may keep in abeyance any application for grant of licence from such person, or direct the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India or any other similar agency to keep in abeyance allotment of imported goods to such persons without assigning any reason and without prejudice to any other action that may be taken in this behalf:

Provided that the period for which the grant of such licence or allotment is kept in abeyance under this clause shall not ordinarily exceed six months."

It was held that even while the power to keep in abeyance the applications for licences or allotments of imported goods could be exercised in the first instance without hearing the concerned applicant, a post decision hearing would suffice. In this connection, in paragraph 15 of the report, the learned Judge has made the following pertinent observations :

"..... Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be predecisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show cause notices for requisitioning vehicles to evacuate population. If there is an out-break of an epidemic, we presume, one does not have to issue show cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post-decisional notices providing an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute....."

In view of this settled legal position, therefore, it must be held that even while exercising powers under Regulation, 44.07(c), which is in " the nature of emergency power, to disconnect i the installation forthwith, the concerned consumer can be heard even at post-decision action stage.

16. It is necessary to note that even while exercising the drastic power of disconnecting the installation forthwith, under Regulation 44.07(c), liberty is reserved to the Board to disconnect the concerned installation forthwith and without notice and it is not as if the Board is bound to disconnect, It depends upon facts and circumstances of each case and that apart, there is provision made in the said clause (c) itself for the restoration of the disconnection at the discretion of the Board and for invoking the said power of the Board, under Regulation 44.07(c), it is for the consumer who has suffered disconnection to apply for restoration on suitable terms. Consumer would in that connection naturally put-forward his own case against the allegation of theft of electricity or alleged tampering of meter at his premises, and his version would naturally be taken into consideration by the Board; This procedural provision found in the latter part of the Regulation 44.07(c) meets the requirement of post decision hearing and would meet with the requirement of natural justice even in such cases. It is, therefore, not possible to agree with the I contention of the learned counsel for the appellants that the Board cannot be permitted to forthwith disconnect the electric installation if the consumer or his agent or servant is or was found committing any of the offences mentioned in the regulation including the theft of electricity and when such notorious activity is detected on spot. In

this connection, we wholly approve the reasoning of the learned single Judge in Nizami Rice Mill's case *supra* as contained in paragraph 8 of the report.

17. We may now summarise our conclusions as under:

(1) If on spot inspection of the consumer's installation it is found by the Inspecting staff that the seals on the meter have been tampered with or have been substituted by fake seals or that the consumer is found on spot inspection to be committing or to have committed any of the offences mentioned in Section 39, 44 or any other provisions of the Electricity Act or Regulations including theft of electricity, the Board in its discretion can forthwith disconnect the installation without notice to the consumer, as such a course is available to the Board under Regulation I 44.07(c);

(2) In such a case post action hearing can be given to the consumer seeking for restoration of power supply as permissible under second part of Regulation 44.07(c) and in such post action hearing consumer may put forward his own version and objections regarding allegation of alleged notorious activity of the consumer and if the Board directs the consumer to take any appropriate action including payment of deterrent charges as demanded, electric supply can be restored as laid down by] Regulation 44.07(c).

(3) If the consumer is dissatisfied with the decision of the Board in this connection, a right of appeal is provided under Regulation 46.01 to the consumer and in the said appeal, the appellate authority may issue appropriate directions including direction to reconnect the electric energy on terms and conditions different from those insisted upon by the Board initially under Regulation 44.07(c).

(4) When it is alleged that the seals of the meter at the consumer's premises are tampered with or fake seals are put up and it is alleged that the consumer is guilty of any of the offences in terms of Sections 39, 44 or any of the provisions of the Act or Regulations, the Authorised Officer before taking any action under Regulation 44.07(a) and before raising the bill has to hold a summary enquiry and for that purpose at least 8 days notice should be given to the consumer concerned calling upon him to have his say in the matter and file his objections against the proposed action of raising the bill as per Regulation 44.07(a). Along with such notice, whatever material is sought to be relied upon by the authorised officer, including copy of the mahazar, if any, and report of on spot enquiry has to be furnished to the consumer to enable him to file objections to the proposed action of the authority. After considering the written objections of the consumer and also giving personal hearing to consumer if the authorised officer so feels necessary, but there being no right to the consumer to demand any personal hearing save and except filing his objections and getting them considered by the authorised officer, the authorised officer if satisfied that the case alleged against the consumer is *prima facie* established attracts Regulation 44.07(a), the authorised officer may raise the bill as per the said provision and on receipt of

such a bill, it will be open to the consumer to prefer an appeal under Regulation 46.01 and to follow the procedure laid down therein. Further it is made clear that no bill can be raised under Regn. 44.07(a) without following the aforesaid modicum of the summary enquiry wherein the consumer must be given an opportunity to have his objections filed to the proposed raising of such bills under Regulation 44.07(a) and if any bill is raised under Regulation 44.07 without following the aforesaid summary enquiry procedure, the bill would be ex facie unauthorised and not competent and consumer would not be required to follow the gamut of filing appeal under Regulation 46.01 against such incompetent and ultra vires bill.

18. In the light of the aforesaid conclusions, we may consider the facts of these cases.

19. In none of the cases before us, before liaising the impugned bill under Regulation 44.07(a) and furnishing the impugned bills to the consumers, opportunity was given to the consumers to have their say in the matter. They were not called upon to file any written objections in the matter. Therefore, all these impugned bills have to be considered to be ultra vires and ex face illegal. Once that conclusion is reached, the result becomes obvious. All these impugned bills will have to be quashed. The appellants consumers cannot be required to file appeals under Regulation 46.01 against such incompetent and ultra vires bills. The respondent Board will have to follow the procedure laid down by us aforesaid before raising fresh bills under Regulation 44.07(a) and after following that procedure, it will be open to the respondent-Board's authorised officer to raise fresh bills under Regulation 44.07(a), if found necessary. In the meantime, whatever amounts have been paid deposited by the appellants pursuant to the interim orders passed in the writ petitions, shall be treated as ad hoc deposits, which will abide by the decision of the authorised officer in connection with raising of fresh bills under Regulation 44.07(a) after following the procedure laid down hereinabove.

20. It is obvious that electric connections restored at the premises of the consumers will also continue subject to the result of the fresh summary enquiry and if ultimately fresh bills are raised under Regulation 44.07(a), the appellants consumers will have to challenge, if so advised, the same by preferring appeals under Regn. 46.01 and the restoration of the electric supply to the concerned consumers pursuant to the interim orders passed by the learned single Judges in the writ petitions and the deposits made by them of the electricity charges will also abide by the final result of those appeals under Regn. 46.01 as and when such appeals are preferred. All these writ appeals are accordingly allowed, the orders passed by the learned single Judges in these writ petitions are set aside and the impugned bills are quashed and the writ petitions will stand allowed to the aforesaid extent.

21. We may make it clear that while allowing amongst other appeals W.A. 3355/93, we find ourselves unable to agree with the factual conclusion to which the

learned Judge has reached in the penultimate paragraph of the judgment to the following effect:

"The mahazar discloses the reason for the action and the petitioner was made aware of the grounds for the action taken under Regulation 44, by virtue of this mahazar. According to the petitioner he was not present when mahazar was prepared. It was prepared in his premises at the time of checking the meter. Petitioner's representative must have been present, because, it is not the case of the petitioner, that the authorities made any forcible entry. In view of the alleged theft and the tampering with the meter, supply of electricity was disconnected forthwith. The manner in which meter was interfered with, has been stated in the mahazar. The mahazar is dated 16-7-1993. The impugned demand of Rs. 1,43,419/- was issued as per the bill dated 25-7-1993 and therefore, petitioner had ample time to put forth his case before the respondents; even otherwise, petitioner can challenge the basis of the demand by filing an appeal, and in the appeal he may also challenge, the basis for the inference of theft,".

We have discussed earlier "that mahazar" would show only the version of the authorities in inspecting the premises on spot. The representative of the appellant might have remained present. But it would not imply any admission on the part of the consumer himself that the meter was tampered with. Therefore, his objections to the proposed demand ought to be considered by the authorised officer under Regulation 44.07(a) before any demand thereunder could be raised. Therefore, there was no occasion for the appellant to prefer an appeal against such an ultra vires demand as shown by us earlier, as admittedly no summary enquiry was held by the authorised officer under Regulation 44.07(a) before raising the demand. With respect, the observations of the learned Judge in paragraph 7 of the report about the correct procedure to be followed have been almost given a go-by by the learned Judge while dealing with facts of the case in penultimate paragraph. Therefore, penultimate paragraph cannot be sustained and the impugned bills must be held to be ultra vires and incompetent. We, however, fully endorse the view of the learned single Judge on the legal position as found in paragraphs 7 and 8 of the report as discussed by us in detail earlier and which view is approved by another Division Bench in Writ Appeal No. 2334/93 supra. But the conclusion of the learned Judge on the application of those principles to the facts of the case in Writ Appeal No. 3355/93 is not accepted by us and only on this ground while maintaining the view of the learned Judge on the legal position as reflected in paras 7 and 8 of his judgment, we allow this appeal,

All these appeals will accordingly stand allowed to the extent indicated hereinabove with no order as to costs all through out in each of them.

22. Order accordingly.