

(2015) 04 MAD CK 0207

In the Madras High Court

Case No : W.A. Nos. 343 & 344 of 1998

The Superintending Engineer, Tamil Nadu Electricity Board
and Others

APPELLANT

Vs

Annamalai Cotton Mills (P) Limited

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Criminal Procedure Code, 1973 (CrPC) — Section 26(b)
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 39

Citation : (2015) 04 MAD CK 0207

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : P.H. Aravind Pandian, AAG assisted by S.K. Rameeshwar, for the Appellant; K. Ravi for Rugan and Arya, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

T.S. Sivagnanam, J.—These appeals by the Tamil Nadu Electricity Board (TNEB) are directed against the common order dated 25.02.1998 in W.P. No. 9026, 9027 and 9028 of 1997 filed by the respondent/Writ Petitioner. The Appellants have preferred these two Writ Appeals against the order in W.P. No. 9027 and 9028 of 1997 and W.P. No. 9026 of 1997, stood dismissed.

2. In W.P. No. 9027 of 1997, the respondent challenged the order dated 26.05.1995, passed by the Superintending Engineer, TNEB as confirmed by the Chief Engineer (Distribution), TNEB (Salem Region), by order dated 11.06.1997, by which the TNEB demanded extra levy from the respondent for alleged theft of energy being a sum of Rs. 9,43,87,324/-. In W.P. No. 9028 of 1997, the challenge was to clauses 8 and 10 of the Terms and Conditions of Supply of Electricity as framed by the Tamil Nadu Electricity Board in BP MS(FB) No. 61, dated 24.12.1988, dealing with theft of energy and extra levy. By the impugned order dated 25.02.1998, both the Writ Petitions were allowed. Consequently, the

demand for extra levy was quashed and clauses 8 and 10 of the Terms and Conditions of Supply of Electricity were held to be beyond the powers conferred under Section 49 of Electricity (Supply) Act.

3.1. The case has a decade long chequered history which requires a prelude to the factual matrix. By letter dated 17.05.1995, the respondent was called upon to show cause as to why extra levy should not be collected from them as theft of energy has been reported in their service connection. The show cause notice referred to an inspection conducted on 11.05.1995, by the Assistant Executive Engineer along with Anti Power theft Squad and Meter Relay Test Branch. The respondent submitted their reply dated 21.05.1995 denying the inspection and the allegation of theft of energy. This was followed by a further explanation/representation on 22.05.1995, reiterating their earlier stand that there was no theft, stating that the Factory Manager and Electrician were detained by the officials with the help of Police and several signatures were obtained from them in blank papers which have been used for foisting criminal case against the Managing Director of the Company. By the said representation the respondent called upon the officials to return all blank papers said to have been signed by the factory Manager and Electrician and also company letter heads. On 26.05.1995, the respondent was slapped with a demand for extra levy of Rs. 9,43,87,324/- stating, on examination of their representation and with reference to the information available, it was found that the respondent committed theft of energy and liable to pay the extra levy. A working sheet was appended to the demand dated 26.05.1995.

3.2. The respondent filed W.P. No. 7556 of 1995 challenging the demand dated 26.05.1995. Simultaneously, the respondent filed a Suit in O.S. No. 160 of 1995, before the Vacation Civil Judge, Salem, challenging the demand and prayed for an order of interim injunction in I.A. No. 511 of 1995. The Civil Court by order dated 07.06.1995, granted an order of interim injunction subject to the condition that the respondent furnishes Bank Guarantee to the tune of Rs. 2,00,00,000/- with further direction to prefer an appeal before the statutory Appellate Authority after paying the balance amount of Rs. 7,43,87,324/-. The respondent aggrieved by such order preferred appeal before this Court in CMA. No. 633 of 1995, and by judgment dated 18.07.1995, while dismissing the appeal, this Court modified the condition imposed by the trial Court by directing furnishing of Bank Guarantee for Rs. 5,18,84,084/- and directing payment of Rs. 4,25,03,240/-. After the disposal of CMA. No. 633 of 1995, the Writ Petition in W.P. No. 7556 of 1995, came up for hearing and this Court by order dated 21.07.1995, while declining to entertain the Writ Petition in view of the pendency of the Civil Suit challenging the very same demand, observed that all contentions of the respondent are left open for being urged in the pending Civil Suit.

3.3. The respondent preferred an Intra Court Appeal in LPA No. 198 of 1995 challenging the order in CMA. NO. 633 of 1995. The respondent also filed W.A. No. 833 of 1995 against the order in W.P. No. 7556 of 1995. In LPA NO. 198 of

1995 the Managing Director of the respondent filed an affidavit seeking permission to withdraw Suit, the affidavit was placed on record and the Suit was dismissed as withdrawn and all contentions raised in the Suit were left open, consequently CMA NO. 633 of 1995 and LPA. NO. 198 of 1995, were dismissed as having become infructuous by order dated 07.08.1995. The respondent withdrew W.A. No. 833 of 1995 and the same was dismissed as withdrawn by order dated 07.08.1995.

3.4. Thus, by virtue of the Civil Suit having been dismissed as withdrawn and the Writ Appeal against the order in the Writ Petition also having been withdrawn, the demand dated 26.05.1995, stood revived and on account of default in payment the service connection to the respondent was disconnected. Subsequently, the respondent filed four Writ Petitions in W.P. No. 11039 to 11042 of 1995 with the following prayers to quash the show cause notice dated 17.05.1995; to quash the demand/assessment order dated 26.05.1995; challenging certain clauses of the Terms and Conditions of Supply of Electricity as formulated in BP MS (FB) No. 61, dated 24.12.1988; and to direct the Board to restore the service connection which was disconnected on 07.08.1995 respectively.

3.5. W.P. Nos. 11039, 11040 and 11042 of 1995 were disposed of by a common order dated 28.08.1995. In the said order, the respondent was directed to file an appeal against the assessment order dated 26.05.1995 before the Appellate Authority within a period of two weeks from the date of the order. All contentions sought to be urged in the Writ Petitions were left to be urged before the Appellate Authority. The respondent was directed to deposit a sum of Rs. 2,00,00,000/- while keeping alive the Bank Guarantee for a sum of Rs. 1,00,00,000/- already furnished pursuant to the order passed by this Court in Crl. O.P. No. 3529 of 1995, dated 24.05.1995, while granting Anticipatory Bail to the Joint Managing Directors of the respondent. On respondent complying with the condition imposed, the Board was directed to resume supply of energy and maintain the same subject to the respondent paying the monthly bills and complying with the other conditions.

3.6. W.P. No. 11041 of 1995, which was filed challenging the validity of the certain clauses of the Terms and Conditions of Supply of Electricity was de-linked from the batch of cases to be heard separately. In the said Writ Petition prayer was made to issue a Writ of Declaration to declare paragraphs 9.00, 11 and 17 of part I of the Schedule to the revised Terms and Conditions of Supply of Electricity in BP MS(FB) No. 61, and Appendix VI and VII in so far as they relate to theft of energy as being ultra vires the power of the Electricity Board and violative of Article 14 of the Constitution of India.

3.7. W.P. No. 11041 of 1995, was disposed of by order dated 02.01.1996, holding that the respondent is not entitled to the declaration as sought for. However, the Court proceeded to consider the validity of the show cause notice and the further proceedings taken by the Board resulting in the demand for extra

levy and held that the show cause notice and the demand are in violation of the principle of natural justice and the same were quashed. In the said Writ Petition, the Board raised an objection stating that the respondent cannot challenge the validity of the show cause notice or the demand in the light of the order passed in W.P. No. 11039, 11040 and 11042 of 1995, dated 28.08.1995. Such contention raised by the Board was rejected observing that when there is clear violation of principles of natural justice, the Court cannot be expected to be a silent spectator and the Court exercising its power under Article 226 of the Constitution could mould the relief depending upon the circumstances and subsequent events. It was further observed that the respondent was ill-advised, approached the Civil Court filed a Civil Miscellaneous Appeal moved a Letter Patent Appeal etc., however, the Hon'ble First Bench have left open all the contentions raised to be decided at a later stage and the same is the order in W.A. No. 833 of 1995, and therefore, the respondent was permitted to urge all contentions not only with reference to the validity of the certain clauses of the Terms and Conditions of Supply of Electricity, but also the validity of the show cause notice and the demand for extra levy.

3.8. The Appellant Board filed W.A. No. 123, of 1996, challenging the order in W.P. No. 11041 of 1995. The respondent filed W.A. Nos. 293, 294 and 296 of 1996, against the common order in W.P. Nos. 11039, 11040 and 11042 of 1995, dated 28.08.1995. The respondent filed W.A. NO. 295 of 1996 against that portion of the order in W.P. No. 11041 of 1995, dated 02.01.1996, dismissing the Writ Petition and upholding the validity of the Terms and Conditions of Supply of Electricity. The Division Bench by common order dated 20.06.1996, allowed W.A. NO. 123 of 1996 filed by the Board and W.A. NO. 295 of 1996 filed by the respondent was dismissed since W.P. No. 11041 of 1995 was dismissed on the ground that the petitioner has availed the remedy of appeal before the Appellate Authority. W.A. Nos. 293, 294 and 296 of 1996, were dismissed as withdrawn and the common order in W.P. Nos. 11039, 11040 and 11042 of 1995, dated 28.08.1995, was modified to the extent indicated. It was further observed that all contentions urged by the respondent are left open.

3.9. The Appellate Authority namely, the Chief Engineer (Distribution), Salem Region, by order dated 11.05.1995, dismissed the statutory appeal filed by the respondent and confirmed the demand dated 26.05.1995 with further direction to the respondent to pay the balance amount of Rs. 7,43,87,374/- after giving credit to the amount of Rs. 2,00,00,000/- already paid.

3.10. The respondent filed three Writ Petitions in W.P. Nos. 9026 to 9028 of 1997, challenging the show cause notice dated 17.05.1995, the order of the Appellate Authority dated 11.06.1997 and for a declaration to declare para 8 and 10 of the Terms and Conditions of Supply of Electricity as invalid and consequently, to set aside the show cause notice dated 17.05.1995. By common order dated 25.02.1998, W.P. No. 9026 of 1997 was dismissed and W.P. Nos. 9027 and 9028 of 1997, were allowed with a direction to restore electricity

supply to the respondent.

3.11. The Appellant Board preferred W.A. Nos. 343 and 344 of 1998 (present Appeals) against the orders in W.P. No. 9027 and 9028 of 1997. The respondent filed two Writ Petitions being W.P. Nos. 7417 and 7418 of 2000, challenging the order dated 20.03.2000 and for a direction to restore the supply of electricity to the respondent Mill, respectively. Another company namely, M/s. Pacific Roofings (P) Ltd., filed W.P. No. 6106 of 2000, to declare paragraphs 8 and 10 of the Terms and Conditions of Supply as ultra vires. The Division Bench by common judgment dated 12.01.2009, allowed the Appeals filed by the Appellant Board, dismissed W.P. No. 7417 and 7418 of 2000 giving liberty to the respondent to prefer an appeal before the Appellate Authority against the order dated 20.03.2000 raising all factual/legal contentions. W.P. No. 6106 of 2000, was also dismissed. The respondent preferred Special Leave Petitions before the Hon''ble Supreme Court against the order passed by the Division Bench contending that the Division Bench which passed the order did not hear the respondent. The Hon''ble Supreme court in Civil Appeal Nos. 6922-6923 of 2009, by order dated 08.10.2009, allowed the Appeals set aside the order passed by the Division Bench dated 12.01.2009, and remitted the matter to this Court to decide the same afresh after giving opportunity of hearing to the parties.

3.12. Though no Appeal was filed against the order in W.P. No. 6106 of 2000 (filed by Pacific Roofings (P) Ltd.,). The Hon''ble Supreme Court set aside the order in the said Writ Petition also. This is how these appeals are before us. W.P. No. 6106 of 2000, was also tagged along with these Appeals and dismissed by order dated 08.04.2015.

4. During the pendency of these Appeals before the Division Bench, the respondent and its Directors were acquitted by the Criminal Court by judgment, dated 30.08.2007 in C.C. No. 143 of 2004. Challenging the order of acquittal, the Board (de facto complainant) preferred Crl. R.C. No. 1677 of 2007 and the same was pending before this Court and by order dated 11.06.2014, the said Criminal Revision Case was dismissed.

5. The learned Additional Advocate General appearing for the Appellant Board submitted that the acquittal of the respondent in the criminal case can have no bearing on the Civil liability as the object of the criminal proceedings is to establish the commission of the offence and to punish the offender, while the civil liability imposed on the respondent on deduction of theft is to make good the loss caused to the Board and hence, both operate in two different fields. Placing reliance on the decision of the Division Bench of this Court in A.V.K. Velayudha Raja Vs. Tamil Nadu Electricity Board it is submitted that acquittal in criminal case of theft of energy will not absolve the consumer from the financial liability. With regard to the challenge to the clauses of the Terms and Conditions of Supply of Electricity, it is submitted that an identical provision as framed by the Andhra Pradesh State Electricity Board was subject of challenge before the Hon''ble Supreme Court in the case of M/s. Hyderabad Vanaspathi Limited Vs.

Andhra Pradesh State Electricity Board and Others, (1998) 4 AD 163 : AIR 1998 SC 1715 : (1998) 3 JT 84 : (1998) 2 SCALE 603 : (1998) 4 SCC 470 : (1998) 2 SCR 620 : (1998) 1 UJ 595 : (1998) AIRSCW 1495 : (1998) 3 Supreme 454 , and the Hon"ble Supreme Court held the relevant clause in the Terms and Conditions of Supply are statutory in character and they can be invalidated only if they are in conflict with any provisions of the Act or the Constitution and no provision has been shown to be in conflict with the Electricity (Supply) Act and Terms and Conditions of Supply does not violate any provisions of the said Act. Therefore, it is contended that the impugned clauses in Terms and Conditions of Supply are intra vires Section 49 of the Electricity (Supply) Act, 1948. Further, it is submitted that the respondent has entered into an agreement with the Board giving a specific undertaking to submit himself to all charges and extra levies imposed by the Board. It is further submitted that the respondent is estopped from challenging the show cause notice and the consequential demand in the light of the orders passed in the earlier Writ Petitions which have become final. That apart the respondent was afforded sufficient opportunity by the Appellate Authority and there has been full compliance of the principles of natural justice and the order passed in the Writ Petitions setting aside the demand and the show cause notice is not sustainable.

6. The learned counsel appearing for the respondent/Writ Petitioner submitted that the challenge to the clauses 8 and 10 of the Terms and Conditions of Supply of Electricity need not be gone into on account of the subsequent event, namely, the acquittal of the respondent and its Directors in the Criminal case, since the jurisdiction of the Board to demand and collect extra levy would arise only on deduction of theft of energy by the authorised officers and theft of energy having held to be not proved by the Criminal Court of competent jurisdiction, the question of demanding extra levy does not arise. It is further submitted that clause 8, 9 and 10 of Terms and Conditions of Supply of Electricity does not confer any adjudicatory power on any of its officers on a charge of theft, thus implying, that such levy would be subject to the adjudication by the competent Criminal Court under Section 39 of the Indian Electricity Act, read with Section 26(b) of Cr.P.C.

7. Replying to the contentions raised by the learned Additional Advocate General that the respondent have been acquitted by the Criminal Court and the acquittal is not a honourable acquittal but acquittal on benefit of doubt, it is submitted that the respondent and its Directors have been acquitted of all the charges and it is not an acquittal on benefit of doubt, though such an observation has been made by this Court in Crl. R.C. 1677 of 2007. It is submitted that there is hardly any distinction between an honourable acquittal and a acquittal on benefit of doubt in a proceedings under the Electricity (Supply) Act and the same would have relevance only in service jurisprudence. While seeking to sustain the order in W.P. No. 9027 of 1997, it is submitted that the learned Single Judge had recorded a finding that before passing the assessment order, the Superintending Engineer had not conducted an enquiry nor communicated the inspection report

nor examined any witnesses in support of the charge of alleged theft of energy, despite specific denial by the respondent/writ petitioner. Further, it has been held that there has been no application of mind and the Superintending Engineer merely arrived at a conclusion that the respondent had committed theft of energy. In this regard, reference was made to the observations made in paragraphs 120 to 135 of the order of the learned Single Judge.

8. It is further submitted that the Appellate Authority also did not afford reasonable opportunity to the respondent and this aspect of the matter has been elaborately dealt with in the order passed in the Writ Petition more particularly in paragraphs 151 to 154 of the order. It is submitted that there was no material available before the original authority or the appellate authority and towards the fag end of the hearing a typed set of papers was handed over to the Appellate Authority and materials collected behind the back of the respondent/writ petitioner could not have been relied upon. The learned counsel further submitted that bias and prejudice were writ large on the face of the record and the conduct of the Appellate Authority and Original Authority in hastily lodging a caveat even before the orders were passed by them is sufficient to hold that the officials of the Board were biased and harboured prejudice against the respondent.

9. Heard the learned counsels appearing for the parties and perused the materials placed on record.

10. After elaborately hearing the learned counsels for the parties and carefully considering the submission and the materials placed on record, the following issues fall for consideration in these Writ Appeals.

Issues for determination:-

(i) whether the respondent/Writ petitioner were entitled to file W.P. Nos. 9027 and 9028 of 1997 challenging the demand for extra levy and to declare the relevant clauses of the Terms and Conditions of Supply as ultra vires in the light of the earlier order passed by this Court and whether the Writ Petitions are barred by the principles of res judicata ?

(ii) whether the show cause notice dated 17.05.1995, and the consequential demand dated 26.05.1995 are vitiated on account of violation of principles of natural justice?

(iii) what is the effect of the acquittal of the respondent and its Directors in C.C. No. 143 of 2004, dated 30.08.2007, confirmed in CrI. R.C. No. 1677 of 2007, dated 11.06.2014 on the demand of extra levy as raised in the demand dated 26.05.1995.?

Discussion:-

Issue No. (i)

11. The learned Additional Advocate General after elaborately referring to the

factual matrix as set out above endeavoured to convince us that the Writ Petitions filed by the respondent challenging the demand and seeking for declaratory relief are not maintainable in the light of the orders passed in W.P. No. 11041 of 1995, dated 02.01.1996, and the order of the Division Bench in W.A. Nos. 123 and 293 to 296 of 1996, dated 20.06.1996 and barred by res judicata.

12. As noticed above, Division Bench while passing the order dated 20.06.1996, dismissing W.A. Nos. 293, 294 and 296 of 1996 as withdrawn, modified the common order in W.P. Nos. 11039, 11040 and 11042 of 1995. W.A. No. 123 of 1996 filed by the Board was allowed. However while doing so, the Division Bench observed that all contentions urged by the respondent/Writ Petitioner are left open. It is to be noted that on the date when the Division Bench passed the order dated 20.06.1996, the appeal petition filed by the respondent before the Appellate Authority challenging the demand dated 20.06.1995, was pending. Therefore, it was well open to the respondent to canvass all points including the contention that there was serious violation of principles of natural justice commencing from the issuance of show cause, being bereft of particulars, total lack of opportunity, failure to furnish copy of the inspection report etc. Therefore, the respondent/writ petitioner's right could not have been foreclosed on account of the earlier orders and it stood preserved to enable the respondent to canvass the same before the Appellate Authority. After the appeal was dismissed by the Appellate Authority by order dated 11.06.1997, the respondent filed three Writ Petitions in W.P. No. 9026, 9027 and 9028 of 1997. The Writ Petitions challenging the show cause notice dated 17.05.1995, was rightly dismissed in the light of the earlier orders passed by the Division Bench. W.P. No. 9027 of 1997, was filed challenging the demand dated 26.05.1995, as confirmed in appeal by order dated 11.06.1997. The said Writ Petition was maintainable, since the order passed by the Appellate Authority gave a fresh cause of action to the respondent to challenge the same. So far as the third Writ Petition in W.P. No. 9028 of 1997, wherein prayer has been made for declaring the provisions of the Terms and Conditions of Supply as illegal, it is submitted that the said Writ Petition is hit by principles of res judicata. This issue was considered by the learned Single Judge and in paragraph 87 of the impugned order it has been held as follows:-

Before proceeding to consider the contentions raised by the counsel for the petitioner as well as by the learned Senior counsel appearing for the respondents, it is sufficient to hold that the Division Bench of this Court by a common order dated 20.06.1996 made in W.A. Nos. 123, 293 to 296 of 1996, made it clear that all the questions have been left open to be agitated before the appellate authority by the writ petitioner in the pending appeal and the finding rendered by the learned Judge in W.P. Nos. 11039, 11040 and 11042 of 1995 on merits have been held to be ineffective and it will not stand in the way of the writ petitioner urging all contentions including the contention that the terms and conditions of supply are not valid. The Division Bench had finally held thus:-

"(i) W.A. Nos. 1293, 294 and 296 of 1996 are dismissed as withdrawn. The common order passed in W.P. Nos. 11039, 11040 and 11042 of 1995 is modified to the extent indicated and confirmed in other respects.

(ii) W.A. No. 123 of 1996 is allowed and the order of the learned Judge is set aside.

(iii) W.A. No. 295 of 1996 is dismissed, as W.P. No. 11041 of 1995 is not sustainable.

(iv) W.P. No. 11041 of 1995 is dismissed on the ground that the petitioner has availed of the remedy of appeal before the Appellate Authority.

(v) All the contentions urged by the writ petitioner in these proceedings are left open".

13. In the light of the above factual position, the Writ Petitions in W.P. No. 9027 and 9028 of 1997 are not barred by the principles of res judicata and accordingly, the issue No. (i) is answered in favour of the respondent.

Issue No. (ii)

14. The Show cause notice dated 17.05.1995, without any doubt is bereft of particulars. It states that pursuant to an inspection on 11.05.1995, theft of energy has been reported and called upon the respondent to show cause as to why extra levy in accordance with the Terms and Conditions of Supply should not be collected from the respondent. Show cause notice did not quantify the amount which was liable to be paid. The learned Additional Advocate General submitted that the show cause notice is in terms of the format given in Appendix IV of the Terms and Conditions and the Board was justified in adopting the statutory format and therefore, the show cause notice cannot be stated to be illegal. Be that as it may, the respondent/writ petitioner submitted their reply dated 21.05.1995, stating that they do not admit that there was an inspection by the officers on 11.05.1995, as stated in the show cause notice; the statement that theft of energy in their service connection "has been reported" conveys no definite meaning; it does not specify the name and designation of the officer who had made such a report; it does not specify the manner in which the alleged theft of energy was stated in such report and consequently, the statement is very vague and general. The respondent emphatically denied the allegation and stated that to their knowledge there was no theft of energy. It was further stated that in terms of the contract between the respondent and the Board dated 16.04.1992, there is no power to make such a levy merely on receiving the report that there has been theft of energy and clause 10 grants power to the Board to levy additional charges on the consumer if the consumer is found indulging in theft of energy. It was further contended that there is no such legal finding and the complaint given to the Police is under investigation and therefore, the show cause notice is pre-mature. Further, it was contended that the claim for compensation could be made by filing a Suit and the show cause notice is

without any basis. Further, it was stated that periodical inspections were done by the officers of the Board and in the course of the inspections carried out on 27.04.1995 and 09.05.1995 nothing was reported suggestive of any theft of energy or malpractice. After raising such contention, the respondent stated that if the authority still refuses to accept their contentions, they may be granted a personal hearing with due notice. On the very next date i.e., on 22.05.1995, the petitioner sent another letter, reiterating their earlier stand in the reply dated 21.05.1995 and stated that they were given to understand that on or after 11.05.1995, the Board officials have taken their factory Manager and Electrician into custody with the help of Police obtained signatures from them in blank papers which were filled up and criminal case was registered against them and Directors of the company and signatures have also been obtained on blank letter head sheets of the company. It was further stated that their Factory Manager and Electrician emphatically denied having committed any offence of theft of electricity. The Executive Engineer of the Board was called upon to return back all the blank papers with signatures of the Factory Manager and Electrician failing which they would be constrained to take legal steps.

15. On receipt of the reply dated 21.05.1995, and the subsequent letter dated 22.05.1995, the Superintending Engineer did not afford any opportunity to the respondent, did not conduct enquiry into the matter, did not furnish the inspection report said to be the basis for the show cause notice and straight away issued the demand dated 21.05.1995. The said demands reads as follows:-

On examination of your representation with references to the information available, it is found that the following has been committed in your service connection.

"Theft of Energy"

2. The extra levy payable by you for the energy stolen is worked out as Rs. 9,43,87,324/- (Rupees Nine crore forty three lakhs, eighty seven thousand, three hundred and twenty four only). The working sheet is enclosed.

3. You are hereby called upon to pay the extra levy in one Lump sum. The extra levy should be paid on or before 09.06.1995. If you fail to pay the above amount before 9.6.95 the service connection will be disconnected.

4. If you choose to prefer an appeal against this order. You may appeal to the Appellate Authority viz., Chief Engineer/Distribution/Salem Region at Erode within 60 days from the date of receipt of this notice after paying the extra levy.

You are requested to acknowledge the receipt of this notice immediately.

16. On a perusal of the above demand, it is evident that the Superintending Engineer did not apply his mind and mechanically issued the demand. None of the contentions raised by the respondent in their reply were adverted to. It is not known as to on what basis the Superintending Engineer recorded a finding of guilt that theft of energy was committed. The Criminal case was pending

investigation. These factors are sufficient to hold that the demand dated 26.05.1995, is vitiated on the ground of violation of principles of natural justice. It is trite law that even administrative decisions should be free from arbitrariness and should satisfy principles of natural justice. The impugned demand is on an alleged charge of theft. Therefore, it is incumbent upon the authority who charges the consumer of having committed theft to clearly disclose as to on what basis such prima facie conclusion has been arrived at, furnish documents/reports in support of such prima facie conclusion afford opportunity to submit objections in writing, then conduct an enquiry by hearing the consumer in person. These are the elementary principles to be adhered to by the authority before raising a demand on a consumer. The show cause notice should have clearly indicated the material based on which the demand for extra levy is sought to be made. We have seen the show cause notice undoubtedly it is bereft of particulars. The explanation of the appellant that the show cause notice is a statutory format is not convincing.

17. The respondent submitted their reply dated 21.05.1995, in which a specific request was made to afford an opportunity of personal hearing, the Superintending Engineer ignored such request and raised a demand by a non-speaking order. The above would be sufficient to hold that the demand was vitiated on account of failure to adhere to principles of natural justice and hence we have no hesitation to confirm the order passed in the Writ Petition in W.P. No. 9027 of 1997 quashing the demand dated 26.05.1995, as confirmed in appeal by the Appellate Authority dated 11.06.1997 with liberty to the first appellant to proceed afresh according to law. Issue No. (ii) is answered on the above terms in favour of the respondent.

Issue No. (iii)

18. The respondent filed W.P. No. 11041 of 1995, for a Writ of Declaration to declare paragraphs 9, 11 and 17 of the Terms and Conditions of Supply of Electricity as ultra vires. The said prayer was rejected by order dated 02.01.1996, holding that the said clause cannot be declared as ultra vires the powers of Board or violative Article 14 of the Constitution. Thus, by virtue of the said order, the respondent's right to once again seek for a declaratory relief should have stood foreclosed, but for the order passed by the Division Bench in W.A. Nos. 123 of 1996 etc., dated 20.06.1996. In the said order, the Division Bench left open all contentions to be raised by the respondent/Writ Petitioner, presumably for the reason that the statutory appeal was filed by the respondent against the demand was pending at that point of time. This liberty which was reserved to the respondent was taken note of by the learned single Judge while considering the correctness of the prayer made in W.P. No. 9028 of 1997. Thus, the challenge to certain clauses of Terms and Conditions of Supply of Electricity made in W.P. No. 9028 of 1997, was maintainable and is not hit by principles of res judicata.

19. Having arrived at such conclusion, necessity arises to test the correctness of

the decision of the learned Single Judge holding certain clauses of Terms and Conditions of Supply of Electricity failed to satisfy the requirements of reasonableness with reference to Article 14 of the Constitution and beyond the power conferred under Section 49 of the Electricity (Supply) Act 1948.

20. The learned counsel appearing for the respondent submitted that the respondent is not seriously canvassing the challenge to the validity of the relevant clauses in the Terms and Conditions of Supply in the light of the acquittal of the respondent and its Directors from the Criminal charge. The learned counsel for the respondent argued that clauses 8, 9 and 10 of the Terms and Conditions of Supply do not grant adjudicatory power to any of its authorised officer on a charge of theft and therefore, the adjudication of the charge of theft has to be only by the competent Criminal Court under Section 39 of the Indian Electricity Act read with Section 26(b) Cr.PC. Therefore, it is the submission that the respondent and its Directors having been acquitted of the criminal charge the question of demanding extra levy does not arise.

21. The fact that the respondent has been acquitted of the criminal charge is not in dispute and the distinction sought to be made by the learned Additional Advocate General that the acquittal is not a honourable acquittal is factually incorrect as on a perusal of the judgment of the trial Court, the trial court has acquitted the accused, as prosecution failed to establish the case by producing evidence to prove the charge.

22. In the light of the factual position and the concession of the learned counsel for the respondent, which is based on instruction from his client, there is no necessity to examine the validity of the relevant clauses of the Terms and Conditions of Supply of Electricity. In the light of the above, that question should be left open for consideration if situation warranted. According the findings recorded by the learned Single Judge to allow W.P. NO. 9028 of 1997, in the common dated 25.02.1999, are set aside and the issue regarding the validity of clauses 8 and 10 of the Terms and Conditions of Supply of Electricity as framed in BP. MS(FB). NO. 61, dated 24.12.1988 is left open for consideration as and when a need arises. Issue No. (iii) is answered accordingly.

23. In the result:-

(i) W.A. No. 343 of 1998 is dismissed and the order passed in W.P. No. 9027 of 1997 is confirmed with liberty to the first appellant to proceed afresh in accordance with law.

(ii) W.A. No. 344 of 1998 is partly allowed and the findings recorded by the learned Single Judge in W.P. No. 9028 of 1997, holding that clauses 8 and 10 of the Terms and Conditions of Supply of Electricity is beyond the power conferred under Section 49 of the Electricity (Supply) Act, is set aside and observations in that regard stand vacated and the issue relating to the validity of clause 8 and 10 of the Terms and Conditions of Supply are left open to be decided as and when a need arises

(iii) In the event the first appellant proposes to exercise the option given by this Court in sub-para (i) above to proceed a fresh in accordance with law, it is open to the respondent to raise all contentions available to them both on law as well as on facts. No costs.