(2011) 04 AHC CK 0109

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 28504 of 2000, 50051 and 48947 of 2007

U.P. Power Corporation Ltd. APPELLANT

Vs

Rakesh Doneria and Others RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:
Electricity Act, 1910 — Section 20, 20(1), 24(2), 26(1), 26(2)

Citation : (2011) 5 ADJ 27 : AIR 2011 All 404

Hon'ble Judges : S.S. Tiwari, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—These three connected writ petitions have been heard together and are being decided by this common judgment. We have heard Sri H.P.Dube, learned Counsel appearing for the U.P. Power Corporation and Dakshinanchal Electricity Distribution Corporation and Sri Rakesh Doneria appearing in person who is Respondent No. 1 in the first writ petition and Petitioner in other two writ petitions.

2. Civil Misc. writ petition No. 28504 of 2000 (hereinafter referred to as first writ petition) contains the genesis of dispute between the U.P. Power Corporation (hereinafter referred to as licensee) and the consumer Rakesh Doneria. The facts giving rise to first writ petition need to be noted in detail to appreciate the nature of dispute between the parties and to decide all the three writ petitions. The facts of writ petition No. 28504 of 2000 are here as under.

3. The consumer, a small scale industry engaged in manufacture of agricultural equipments/machinery, thrashers, trailer, trolleys etc. was granted an electric connection in the year 1980. In the year 1994 the load was extended up to 331 KVA. On 11.7.1994 a meter was installed which mentioned line C.T Ratio 20/5, overall multiplying factor 400 for all and 4 for KWA. A sealing certificate was issued on 1.8.1994 mentioning the lince C.T. Ratio as 20/5 and over all multiplying factor-400 for all and 4 for KWA. Bills were raised on the basis of the

aforesaid C.T. Ratio and multiplying factor upto June, 1996, which were duly paid. A bill of Rs. 1,52,813/- was issued on 3.7.1996 in which for the first time, the multiplying factor was mentioned as 600 and OMF 6 was applied instead of 400 and 4. The consumer paid Rs. 100,000/- under protest. The said bill was said to be raised on the basis of checking dated 3.7.1996. A letter dated 16.8.1996 was written by the Executive Engineer, Electricity Distribution Division which mentioned that although checking was made on 3.7.1996 by the Assistant Engineer in which C.T. Ratio has been shown as 30/5 in place of 20/5, but it is not mentioned that checking was made by primary injection set hence, comprehensive checking is necessary. Letter further mentioned that earlier billing was made on the basis of multiplying factor 400 whereas it ought to have been 600 in view of the C.T. Ratio being 30/5, which indicate that consumption was being less recorded. On 17.8.1996, a checking was claimed to be held in which C.T. Ratio was noted as 30/5 and multiplying factor as 600 and 6. The consumer filed suit No. 589 of 1996 for permanent prohibitory injunction restraining the licensee from realising any bill prepared on the basis of multiplying factor as 600 and 6, and disconnecting the supply. Interim injunction was issued on 21.8.1996 by the Civil Court. A supplementary bill of Rs. 12,59,895.84 was issued taking multiplying factory as 600 and 6. The Civil Judge granted a temporary injunction on 7.1.1997 against which First Appeal From Order was filed by the licensee in which interim order was passed. However, subsequently a request was made in the appeal that the consumer intended to withdraw the suit itself and consequently, the suit was withdrawn. On 2.9.1997, the consumer gave a notice to the licensee for getting the meter checked by Electrical Inspector in accordance with the provisions of Section 26(6) of Indian Electricity Act, 1910. On 4.9.1997, the Executive Engineer wrote a letter to the Petitioner stating that it is neither justifiable nor practicable to get the meter checked by Electrical Inspector. The Petitioner on 10.9.1997 sent a letter to the Electrical Inspector for checking the meter u/s 26(6) and to declare the correct multiplying factor. The Deputy Director, Electrical Safety called a report from the Executive Engineer of the licensee on 27.10.1997,5.12.1997 and 23.5.1998. But no report was submitted. Again on 6.7.1998, the Deputy Director, Electrical Safety asked the Executive Engineer of the licensee as to why the report had not been submitted. The consumer filed a suit being suit No. 429 of 1998, alleging that licensee and its officer are trying to replace the disputed metering equipment from the premises and they may be injuncted to do so. Interim injunction was granted by the trial Court. Licensee made an application in suit No. 429 of 1998, praying that they may be permitted to install an electronic meter parallel to the metering equipments, and Civil Judge passed an order on 15.7.1998 for doing the same but with concurrence and in the presence of the Electrical Inspector. The consumer on 24.8.1998 again wrote to Electrical Inspector for checking. On 25.8.1998, Director Electrical Safety, UP. Government wrote to the Executive Engineer that an electronic reference standard meter and alternate C.T. be installed between 10.9.1998 to 11.9.1998. Sri V.K. Mathur, Deputy Director, Electrical Safety and Sri Nand Kishore, Assistant Director Electrical Safety were authorised by the Director, Electrical Safety, State of UP. Lucknow to inspect the meter and do the needful. On 10.9.1998, the Deputy Director and the Assistant Director authorised by the Director, Electrical Safety reached at the premises of the consumer at 11 a.m. The Executive Engineer, Assistant Engineer, Junior Engineer and Sub Divisional Officer of the licensee were also present and checking was carried out till 11:30 pm. i.e. for 12 hours. A Check Meter was installed whose reading was also taken for half an hour and it was decided that further result of testing would be taken on 11.9.1998 at 2 p.m. A report was prepared by the Deputy Director, Electrical Safety, Assistant Director, Sub Divisional Officer, Assistant Engineer and Junior Engineer on 10.9.1998, which contained an endorsement "existing metering panel including seals not disturbed". On next day ;.e. 11.9.1998, the Deputy Director Sri V.K. Mathur and Junior Engineer of the licensee presented themselves at the premises of the consumer but the Executive Engineer and Assistant Engineer of the licensee could not come up to 5 p.m. and when they came at 5 p.m. electricity supply was not there hence, they left on the pretext that they are going for getting the supply restored and thereafter they did not turn up. On 11.9.1998, the supply was restored after 5 p.m. for some time but the Executive Engineer did not turn up then Deputy Director tried to contact them but failing to contact, they issued a direction to the Executive Engineer to be present on 12.9.1998 at 11 a.m. On the same day i.e. on 11.9.1998, a first information report was got registered by the Executive Engineer of licensee against the consumer u/s 39/40 of the Indian Electricity Act, 1910. In the first information report, it was alleged that on 11.9.1998, when checking was made, it was found that seals on the meter are not genuine hence, a checking report was also prepared by the Executive Engineer and his subordinates containing endorsement that consumer had not signed. Checking report further mentioned that checking was made in the presence of Deputy Director, Electrical Safety, UP. Government Lucknow between 15:30 hours to 18:45 hours.

4. A chik first information report which was submitted before the police station also contained the name of Deputy Director Sri V. K. Mathur and Assistant Director, Sri Nand Kishore. When the aforesaid officers came to know about the said fact, letter dated 14.9.1998 was written by the Deputy Director Electrical Safety to the Senior Superintendent of Police, Agra that no first information report had been lodged with their signatures and they had no concern with the allegations of theft of electricity and they were not agreeable to those allegations. Director electrical Safety also on 17.10.1998 wrote to Senior Superintendent of Police that checking report was not prepared in the presence of the Deputy Director as alleged on 11.9.1998.

5. A provisional assessment dated 15.9.1998 was made by Executive Engineer on the basis of alleged checking dated 11.9.1998 for an amount of Rs. 46,23,497/ - which was objected by the consumer. A writ petition No. 4388 of 1988 was filed by the consumer, challenging the notice of provisional assessment and checking. On 13.10.1998, the assessment was finalised. The writ petition

No. 4388 of 1998 was withdrawn with the permission of the Court on the ground that Investigating Agency had already submitted a report. Police had submitted a final report in the criminal case arising out of information report lodged on 11.9.1998, which was accepted by the 1st A.C.J.M. on 16.11.1998. Criminal Revision was filed by the licensee against the order of First A.C.J.M, which was allowed and the matter was remanded for fresh consideration. A complaint was also filed by the consumer to the Udyog Bandhu, which is a unit constituted in district to help the small scale industires. Complaint was made that electricity was disconnected without information illegally and to obstruct the inquiry by the Deputy Director, Electrical Safety and action of the licensee and its officers was for the purpose of closing the unit. A meeting of the Udyog Bandhu was held. Under the orders of the District Magistrate, City Magistrate was directed to submit an inquiry report with regard to disconnection and lodging of the first information report by the licensee. The City Magistrate after hearing the consumer and officers of the licensee submitted a report on 17.12.1998 that the licensee with intent to harass the consumer, had made false allegations of tempering of seal. It was found by the City Magistrate that action of the officers of the licensee was to obstruct the inquiry by the Deputy Director, Electrical Safety and there was no fault of the consumer and the officers of the licensee were guilty.

6. In the meeting of the Udyog Bandhu held on 22.2.1999, it was decided that the premises be checked again in the presence of the Magistrate. On 21.4.1999/ 22.4.1999, the premises were again inspected in the presence of the officers of the licensee, the Joint Director Electrical Safety as well as the consumer. The said checking report was considered by Director, Electrical safety and a decision dated 26.4.1999 was taken by Director, Electrical Safety u/s 26(6) in reference to the dispute which was raised by the consumer regarding correctness of the meter. The Director Electrical Safety found that C.T. Ratio was 20/5 and multiplying factor was 400 and 4. The Director Electrical Safety held that supplementary bill prepared on the basis of C.T. Ratio 30/5 and multiplying factor 600 and 6 was not correct. The supplementary bill of Rs. 12,59,895.84 was held to be incorrect. The licensee filed an appeal before the State Government against the said order of the Director dated 26.4.1999. After exchange of counter-affidavit and rejoinder affidavit between the parties, the appeal was decided by the State Government vide its order dated 4.4.200. The appeal filed by the licensee was rejected. The appellate authority recorded a categorical finding that the multiplying factor of the meter was 400 and 4 and the supplementary bill was to be set aside. It was also held that when the checking was done in the presence of Deputy Director on 10.9.1998 by installing a check meter which checking took place for 12 hours, the disconnection of electricity without permitting the inspection to be completed, was deliberate obstruction and lodging of first information report by the licensee with forged signatures of Deputy Director and Assistant Director was also proved that the officials of the licensee had acted arbitrarily and were involved in fraud and their conduct was strongly condemned.

It also directed that recovery certificate issued against the consumer be withdrawn and electricity be connected. The licensee filed a review before the State Government to review the order dated 4.4.200, which too was rejected on 27.5.2000. The first writ petition being writ petition No. 28504 of 2000 has been filed by the UP. Power Corporation, challenging the order dated 4.4.2000,27.5.2000 as well as the order dated 26.4.1999 of the Director Electrical Safety. The following are the prayers made in the first writ petition.

1. to issue a writ, order or direction in the nature of certiorari quashing the orders dated 4.4.2000 and 27.5.2000 (Annexure-37 and 39 to this petition).

2, to issue a writ, order or direction in the nature of certiorari quashing the orders dated 26.4.1999 (Annexure-31 to this petition).

3. to issue any other writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstances of the case.

7. The second writ petition being writ petition No. 50051 of 2007 has been filed by the consumer, challenging the recovery certificate and citation for recovery of amount on the basis of theft assessment dated 15.9.1998/13.10.1998 as noticed above. Recovery certificate dated 9.8.2007 was issued by the Executive Engineer for recovery of amount of Rs. 1,23,21,621/-, which according to the licensee was in pursuance of theft assessment of Rs. 46,23,497/- plus interest and surcharge for late payment. In pursuance of the recovery certificate, citation has been issued by the Tahsildar on 21.8.2007 for attachment of immoveable properties. Consumer filed the second writ petition, challenging the recovery proceedings. Following reliefs have been claimed in the second writ petition:

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned recovery citation dated 21.8.2007, Rs. 1,23,21,643/- issued by the Respondent No. 5 in pursuance of demand notice dated 5.4.2007 issued by the Respondent No. 3 (Annexure No. 14 to the writ petition).

(ia) To issue a writ, order or direction in the nature of certiorari quashing the impugned recovery certificate dated 9.8.2007 issued by the Respondent No. 3 and the entire recovery proceeding initiated on the basis thereof including the attachment order dated 15.7.2009 and the auction dated 17.8.2009 (Annexure No. 40,42,46) to the writ petition.

(ib) To issue a writ, order or direction in the nature of mandamus commanding the Respondent Nos. 3,4,5 and 6 to return the plant and machinery, finish goods, raw materials, cash, almirahs, movable properties attached and auctioned on 12.11.2007 and the immovable property attached and auctioned on 15.7.2009 and 17.8.2009 respectively.

(ic) To issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 3 to restore the electricity service connection No. 089035-20 HP-LMV-6 at Petitioner''s premises 11/124-D/1, Chini Ka Roza, Rambagh Agra without demanding minimum consumption charges and other charges.

(id) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.2.2007 passed by the Executive Engineer and the disconnection/inspection report dated 17 10.2007 passed by the Respondent No. 3 (Annexure No. 27 and 30) to the writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus directing the Respondents not to arrest or torture to the Petitioner in pursuance of impugned recovery citation dated 21.8.2007 issued by Respondent No. 5.

(iii) issue or pass any other/further order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

8. Writ petition No. 48947 of 2007, the third writ petition has been filed by the Petitioner for a writ of mandamus, directing the Respondents not to disconnect the electric connection of the Petitioner''s firm and further to adjust the amount of Rs. 1,95,575/- in the electric bills issued after 30.11.2005 and to refund the excess amount of Rs. 3,08,91,900.75 with interest as well as compensation for loss has also been claimed.

9. From the facts as noticed above, it is abundantly clear that dispute between the licensee and the consumer cropped up after June, 1996. Officers of the licensee prepared the bill dated 3.7.1996 on the basis of C.T. Ratio 30/5 with multiplying factor 600 and 6, whereas the meter details which was installed on 11.7.1994 mentioned C.T. Ratio 20/5 with multiplying factor 400 and 4. The Petitioner objected to the billing on the basis of changed multiplying factor and raised a dispute before the Electrical Inspector u/s 26(6). The Electrical Inspector initiated process for inspection and inquiry to take a decision regarding the dispute of meter and fixed 10.9.1998 and 11.9.1998 as the dates for carrying out checking of the correctness or otherwise of the meter. On 10.9.1998, the Deputy Director, Electrical Safety, Assistant Director, Electrical Safety with other officials of the licensee reached the premises of the consumer at 11 a.m. and continued checking till 12:30 a.m. for more than 12 hours. A meter for checking the existing meter was also installed reading of which was also taken. It was decided to again check the reading at 2 p.m. on the next date at 11 a.m. At 2:00 p.m. although the Deputy Director alongwith Junior Engineer reached but Executive Engineer and other officials did not come and they came at 5 p.m. Thereafter the meter room was opened and since there was no electricity, the Executive Engineer and other officials of the licensee went back on pretext of restoration of electricity and thereafter they did not return. A checking report was prepared and first information report was lodged at 7 p.m. for theft of electricity on the basis of the alleged checking dated 11.9.1998. Theft assessment was made of Rs. 46,23,000/ and a supplementary bill dated 25.8.1996 of Rs. 12,59,895.84 was issued on changed multiplying factor of 600 and 6. All subsequent proceedings by the licensee and the consumer have been taken on the above basis.

10. Sri HP. Dube, learned Counsel appearing for the UP. Power Corporation in

support of the first writ petition contended that the present was not a case in which Section 26(6) was attracted and the Electrical Inspector/Director Electrical Safety had no jurisdiction to determine the correctness or otherwise of the meter. He further submitted that at best dispute before the Electrical Inspector could have been with the C.T. ratio and Section 26(6) becomes inapplicable as soon as allegation of theft of electricity is made. He submits that C.T. ratio was wrongly mentioned in the sealing certificate prepared in the year 1994 and in the checking held on 17.8.1996, C.T. Ratio was found as 30/5 with multiplying factor 600 and 6. He submits that due to incorrect mention of C.T. ratio and multiplying factor, earlier billing was with regard to only 2/3rd consumption of the electricity hence, a supplementary bill of Rs. 12 lacs and odd was rightly issued. He submits that in view of the dismissal of suit No. 458 of 1996 for non prosecution and non compliance of the interim order passed in First Appeal From Order, consumer is liable to pay the supplementary bill. He submits that Electrical Inspector has passed the order dated 26.4.1999 without considering the various pleas raised by the Corporation. He submits that appeal as well as review also have been dismissed by the State Government without considering all aspects of the matter. He further submits that in any view of the matter, the Electrical Inspector as well as the State Government, while deciding the dispute u/s 26(6) and while hearing the appeal against the said order, could not have recorded a finding with regard to theft assessment on the basis of the checking dated 11.9.1998 and the theft assessment on the basis of checking dated 11.9.1998 is beyond the purview of Electrical Inspector. He further submits that against the theft assessment, appeal was also dismissed hence, the Petitioner is liable to pay the amount. He submits that the amount has increased due to adding the interest and late payment surcharge to the extent of Rs. 1,23,00000 and odd and recovery certificate has rightly been issued on 9.8.2007. Opposing the second writ petition, Sri Dubey submits that the appeal of the Petitioner against the assessment having been dismissed, the Petitioner is liable to pay the theft assessed amount. He again reiterated that Electrical Inspector and State Government had no jurisdiction to enter into the dispute of theft assessment on the basis of checking dated 11.9.1998 and observations and findings in that regard are to be ignored. He submits that insofar as acquittal of the consumer in the criminal case lodged on the basis of the first information report dated 11.9.1998, the Corporation has already filed an appeal which is pending consideration. Opposing the third writ petition filed by the consumer, he submitted that the Petitioner is not entitled for any refund and all the bills have been correctly issued.

11. Sri Rakes h Doneria, the Respondent in the first writ petition and Petitioner in other two writ petitions has appeared in person and has referred to various materials on the record in support of his submissions. Sri Doneria submitted that after installation of meter on 11.7.1994, which contained the C.T. ratio as 20/5 and multiplying factor as 400 and 4, the bills were being prepared accordingly. He submits that every month''s checking was made after installation of the meter and at no point till July, 1996 any objection was raised with regard to C.T. ratio

and it was only on 3.7.1996 that a bill was prepared on the basis of multiplying factor 600 and 6, and C.T. ratio 30/5 which was objected. He submitted that letter dated 16.8.1996 was written by the Executive Engineer himself that since the checking dated 3.7.1996 was not done by primary injection set hence, a thorough checking was required. Sri Doneria submits that after due notice to the licensee, he raised a dispute u/s 26(6) of the Electricity Act, 1910 disputing the C.T. ratio 30/5 and multiplying factor 600 and 6 on the basis of which the supplementary bill has been prepared on 25.8.1996. He submits that on a dispute raised by the consumer, the Electrical Inspector asked the report from the Executive Engineer by several letters which was not submitted. He submitted that raising of the dispute by the consumer of correctness of the meter was not liked by the officers of the licensee and Executive Engineer infact wrote a letter on 4.9.1998 to the consumer that checking of the meter by Electrical Inspector was neither legal nor practicable. He submits that no report was submitted by the licensee to the letters of the Executive Engineer and they wanted to replace the disputed metering equipment from the premises of the consumer hence, suit No. 429 of 1998 was filed by the Consumer in which interim injunction was granted on 15th July, 1998, directing the parties to maintain status-quo. However, on an application by the licensee, the Civil Judge permitted installation of electronic meter parallel to the existing meter with the concurrence and presence of the Electrical Inspector. On 9.9.1998, the Electrical Inspector wrote to the licensee to carry out checking between 10.9.1998 and 11.9.1998 by installing an electronic reference standard meter. The facts which transpires on 10.9.1998 and 11.9.1998 have been pleaded in paragraph 27 to 29 of the counter-affidavit in the first writ petition. Sri Doneria submits that no checking was made on 11.9.1998 as alleged by the licensee nor any report was prepared on the spot i.e. in the premises of the consumer on 11.9.1998. The report and first information report was prepared not in presence of Deputy Director and Assistant Director of Electrical Safety, who were present in the premises from 2 p.m. on 11.9.1998 as was earlier fixed. They have neither signed the alleged checking report nor has lodged the first information and lodging of the first information on 11.9.1998 was mala fide action on the part of the Respondents to obstruct the checking of the meter when they saw that their claim that meter is not correct and recording less consumption was not going to succeed, they adopted the concocted and false allegations of electricity theft and lodged first information report. The report which was prepared on 11.9.1998 neither contained the signature of the consumer nor of the Deputy Director and Assistant Director who were present for the purpose of checking the meter nor there was any independent witness hence, the checking report cannot be basis of any further action against the consumer including assessment. It is submitted that Electrical Inspector was fully competent to decide the dispute of correctness of the meter and the Electrical Inspector decided the dispute after considering all relevant facts including the checking reports dated 21.4.1999 and 22.4.1999 which were made in the presence of Magistrate as well as the officials of Directorate of Electrical Safety. Sri Doneria submits that inquiry on the administrative level by the City Magistrate also held that first information report was falsely lodged. Consumer was not at fault and it was mischievous Act of officers of the licensee. He submits that criminal case resulted in clear acquittal and the whole concocted theory has fallen on ground hence, both supplementary bill as well as theft assessment bill have lost their basis and are liable to be ignored.

12. Refuting the submission of Sri Dube that Electrical Inspector had no jurisdiction to entertain the dispute u/s 26(6), Sri Doneria submits that dispute was fully cognizable u/s 26(6) and theft assessment which stemmed from the very inquiry u/s 26(6) and having been found to be false and concocted have to be ignored and findings recorded by the Electrical Inspector and State Government in this regard are perfectly justified and valid. He submits that officers of the licensee have acted mala fide with only intention to harass the consumer and stop his industry to work and succeeded in ruining the consumer which fact have been found as true both by the State Government in its order dated 4.4.2000 as well as the magisterial inquiry. He submits that against the officers of the Corporation, the State Government in its order has recorded a categorical finding of doing harassment and their conduct was deprecated but Corporation to shield the illegal and nefarious activities of their officers, has neither held any inquiry nor has taken any action and higher officers of the Corporation have been shielding their officials to protect their nefarious unauthorised and illegal activities. He submitted that recovery certificate dated 9.8.2007 being illegal and void cannot be allowed to continue. He submits that checking dated 11.8.1998 having itself been found to be concocted and not genuine checking, all subsequent action has to be treated as nonest. He submits that excess bills were realised from the Petitioner (consumer) for a long period which the Respondents are liable to refund. Further a bill of Rs. 1,95,575/- has not been adjusted. Sri Doneria claims that consumer is entitled for compensation in view of the facts of the present case and findings recorded by the Electrical Inspector as well as State Government

13. Both Sri H.P. Dube and Sri Rakesh Doneria consumer have relied on various judgments of the apex Court and High Courts, which shall be referred while considering the submissions in details.

14. The submissions raised by Sri Dube that Electrical Inspector had no jurisdiction to entertain the dispute u/s 26(6) and the order passed by the Electrical Inspector is without jurisdiction needs to be considered first.

Section 24 and 26(6) which are relevant for the present case are extracted as below:

24. Discontinuance of supply to consumer neglecting to pay charge.--(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days'' notice in

writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply- line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this Section until the Inspector has given his decision: Provided that the prohibition contained in this Sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee''s charges or other sums in dispute or for the deposit of the licensee''s further charges for energy as they accrue, and the consumer has failed to comply with such request.

26. Meters.--(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter: Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(6) Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity: Provided that before either a licensee or a consumer applies to the Electrical Inspector under this Sub-section, he shall give to the other party not less than seven days'' notice of his intention so to do.

15. Section 26(6) has come up for consideration before the apex Court in large number of cases. The apex Court in Belwal Spinning Mills Ltd. etc. Vs. U.P. State Electricity Board and another, had occasion to consider the ambit of Section 26(6). Paragraphs 37,39 and 49 which are relevant are quoted as below:

37. After giving our careful consideration to the facts and circumstances of the cases in these appeals and the submissions made by Mr. Gupta, Mr. Sen and Mr. Andherujina, and learned Solicitor General, it appears to us that Section 20 of the Electricity Act authorises the licensee to enter the premises of the consumer

to remove fittings and other apparatus installed by the licensee. Clause (a) of Sub-section (1) of Section 20 authorises the licensee to enter the premises of the consumer for ''inspecting, testing, repairing or altering the supply lines, meters, fittings and apparatus for the supply of energy belonging to the licensee. The licenses, therefore, cannot only enter the premises of the consumer for inspecting, testing etc. but the licensee also can alter the meter whenever such alteration is needed. Such power u/s 20 does not depend on the adjudication of correctness of the meter and other apparatus by the Electrical Inspector on a reference u/s 26(6) of the Electricity Act. But such power flows from the statutory duties and function of the licensee to maintain the correct meter for recording the quantum of electricity supplied to the consumer. Such duty to ensure maintenance of correct meter in the premises of the consumer has been indicated in Sub-section (1) and Sub-section (2) of Section 26. The power of removing the meter u/s 20, however, is circumscribed by the proviso to Sub-section (4) of Section 26 only when the dispute as to the function of the meter has been referred to the Electrical Inspector under Sub-section (6) of Section 26. A licensee is authorised under Sub-section (7) of Section 26 to place, in addition to the meter installed in the premises of consumer as referred to in Sub-section (1) of Section 26, other meter or apparatus as the licensee deem fit for the purpose of recording or regulating the amount of energy supplied to the consumer. Such power also does not depend on the existence of any dispute as to the correctness of the meter installed.

39. The expression ''check meter'' has no special significance or legal incidence for which there is a bar that check meter cannot be treated as an altered meter if the licensee intends to replace the defective meter by the check meter. It will be open to the Electrical Inspector to ascertain the correctness of the check meter alongwith the disputed meter when dispute is referred for adjudication by the Electrical Inspector and the licensee found its case with reference to check meter. Prior to the amendment of Section 26(6) of Electricity Act, the Electrical Inspector or the competent person specially appointed by the State Government in this behalf, had a statutory duty to first determine whether the meter in question was defective and thereafter to estimate the quantity of the electricity consumed during such time as the meter in the opinion of the Electrical Inspector or the competent person ''shall not have been correct''. After the amendment of Sub-section (6) of Section 26, the Electrical Inspector is the only statutory authority to decide the dispute about the correctness of the meter, if such dispute is raised by either of the parties. If the Electrical Inspector on a reference comes to the finding that the meer has ceased to be correct, the said Inspector has a statutory duty to estimate the amount of energy supplied to the consumer or electrical energy contained in the supply during such time not exceeding six months as the meter shall not, in the opinion of such Inspector, have been correct.'' (emphasis added)

49. Such legislative change by the amendment of Sub-section 6 of Section 26, in our view, has been introduced to set at rest any dispute between the licensee

and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practised by the consumer for all other period anterior to statutory period for estimation. There is good reason for such legislative change because is may not be possible to precisely determine exactly from which point of time the meter ceased to be correct. The scheme under Electricity Act clearly reveals that a correct meter is to be installed and such correct meter is to be maintained by the licensee in the premises of the consumer so that consumption of electricity is computed on the basis of reading in the meter. The scheme also reveals that unilateral decision of either of the parties about the correct status of the meter is not be accepted by the other party if the other party raises objection as to the status of the meter. Whenever both parties do not accept a meter to be correct and the dispute is raised, such dispute is got to be resolved by referring to a statutory authority u/s 26(6), namely, the Electrical Inspector. Within the integrated scheme u/s 26 of the Electricity Act, it is not possible that even though dispute is raised about the mal functioning of the meter such dispute will be treated as statutorily resolved for a limited period in accordance with the amended Sub-section (6)of Section 26 but for other period anterior to the same, the dispute will remain unresolved and claim of the licensee be open to be challenged. Therefore, simply on the finding that mere had ceased to be correct by the Electrical Inspector on entering the reference a licensee may not be justified in contending that a particular meter had ceased to be correct from a particular point of time even though the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter and by replacing it if necessary has failed to take appropriate step. Both Mr Sen and the learned Solicitor General in their fairness, have submitted that beyond the statutory period for which no estimation for the consumption of electricity is to be made by the Electrical Inspector attaching statutory finality to such estimation, although the licensee is not precluded from raising revised claim for other period anterior to the statutory period of estimation but such claim will be open to be challenged by the consumer. In our view, by the amendment of Sub-section (6) of Section 26, the Legislature has intended to put an end of such contest between the licensee and the consumer and has set at rest of any dispute relating to any period anterior to the statutory period of estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

16. Whether the dispute raised by consumer by letter dated 10.9.1997 was within the ambit of Section 26(6) has to be considered by looking to the nature of dispute raised. From the facts as noticed above, it is clear that when the meter was installed on 11.7.1994, the C.T. Ratio mentioned in the meter details were 20/5 and multiplying factor 400 and 4 which details are also mentioned in the inspection and sealing certificate dated 1.8.1994. The meter details as contained in the meter installed on 11.7.1994 have been brought on record as Annexure-C.A.1 to the counter-affidavit which are as follows:

Name of Consumer

M/s RakeshDoneria

Sanctioned Load

331 KVA

Process

Furnace

Date of Meter installation

11.7.94

Meter Make L & G

Type Taireat.

Maker No. 35113-708

Department No. CHYD-12

Line C.T.R. 20/5

Line P.T.R. 11KV/110V

Meter C.T.R. 20/5

Line P.T.R./110V-140V

D.F. For KWH 1

O.M.F. For Demand 4

17. A copy of the sealing certificate dated 1.8.1994 has been filed as C.A.-2 to the counter-affidavit filed on behalf of Respondent No. 1 in the first writ petition, which clearly mentioned line C.T. Ratio 20/5, Overall M.F. 400 for all and 4 for KWA. Electricity bills were on the above basis. It is the case of the corporation that on 3.7.1996 in the checking, it was found that C.T. Ratio was 30/5 and multiplying factor was 600 and 6. Checking report dated 3.7.1996 has been brought on record as Annexure-3 to the writ petition which indicates Line C.T.ratio 30/5A and over all M.F 600 for KWH and 6 for KVA. Thus, the bill dated 3.7.1996 was prepared on the aforesaid C.T.R. The sealing certificate dated 17.8.1996, Copy of which has been filed as Annexure-4 to the writ petition also mentions the same figures. A supplementary bill dated 25.8.1996 was issued to consumer for Rs. 12,59,895.84. The letter dated 25.8.1996, copy of which has been filed asAnnexure-C.A-5, mentions that difference of electricity bill from 11.7.1994 to 25.5.1996 is being assessed as Rs. 12,59,895.84. The letter dated 16.8.1996 issued by the Executive Engineer which has been filed as Annexure-C.A.5 is also relevant in this context The said letter mentions that Assistant Engineer (Meter) in its checking dated 3.7.1996 has mentioned C.T. Ratio 30/5 in

place of 20/5. The letter further mentions that it was not stated as to whether the checking was made by C.T. Primary injection set and on the basis of checking fresh assessment of about Rs. 11 lacs against the consumer has been made hence, thorough checking is needed. The Executive Engineer requested that Superintending Engineer be requested that in his presence, the undersigned shall inspect checking of the consumer.

18. The consumer by his letter dated 2.9.1997 informed the Executive Engineer that consumer is applying to the Electrical Inspector to check the metering equipments to declare correct meter/multiplying factor. The Director of Electrical Safety took cognizance of the application and wrote to the Executive Engineer on 6.7.1998 (Annexure-C.A-13) that alongwith meter, correctness of C.T. Ratio is to be inquired. Thus, the Electrical Inspector was requested to determine as to what is the correct C.T. Ratio and multiplying factor of the metering equipments and as to whether the details as mentioned in the meter dated 11.7.1994 and sealing certificate dated 1.8.1994 are correct or the changed C.T. Ratio as mentioned in the sealing certificate dated 3.7.1996 is correct.

19. The apex Court in its judgment in the case of U.P.S.E.B. Vs. ATMA Steels and Others, while considering the provisions of Electricity Act, 1910 have held that C.T. and RT. are part of the meter. In the said case, a surprise checking was made of the consumer premises where it was found that in the potential transformer (PT) a fuse was blown off with the result it was not supplying electricity from primary cable to second cable. Notice was issued to the consumer to show-cause as to why charges for less consumption be not charged for the period December 1991 to December 1992. Assessment was made and bill was raised. A suit was also filed but when the suit was still pending an application was made to the Chief Electrical Inspector u/s 26 requiring him to exercise his jurisdiction. The Electrical Inspector allowed the application of the consumer. An appeal was filed u/s 36(2) which was allowed holding that transformer could not be regarded as a meter and therefore the Electrical Inspector had no jurisdiction. A writ petition was filed by the Consumer. High Court held that transformer had to be held as meter within the meaning of Section 26(7) of Indian Electricity Act, 1910. The U.P. State Electricity Board filed SLP challenging the judgment of the High Court. The apex Court affirmed the view of the High Court that potential transformer is part of the meter. Following was laid down in paragraphs 7 and 8.

7. We have heard the counsel for the parties and seen the material on record and we see no reason to disagree with the conclusion of the High Court regarding the Inspector entertaining the application u/s 26(7) specially in view of the fact that in the Manual on H.T. Consumers Metering published by the Central Board of Irrigation and Power regarding the potential transformer with relation to salient feature of metering equipments it is stated asunder:

(i) The metering equipments consist of CT and PT units. For LT meters (i.e., for 3 phases 4 wire) only three single phase VTs are required. For HT metering 3 phases PT and tow CTs in R & B phases are required. CTs and PTs or only CTs for

LT metering are to be tested for their correct polarity and ratio as per their terminal markings and name plate details respectively, beside their insulation resistance etc. since the CT and PT ratios have a direct relation with the consumption recorded by a meter.

8. It is clear that the only function of the PT in a given case like the present where the power is being supplied to the Respondent at 11000 Volt, is to reduce it to 110 Volt so no to enable the meter to record the amount of power which is consumed by the industry. It is common ground that the existing meter could not record the power consumed unless there was stepping down of the voltage from 11000 to 110. This stepping down was done by the PT. It is also not in dispute that after the recording of the consumption by the meter the power, which was reduced from 11000 to 110 Volt, is not used by the Respondent. This clearly shows that the only function of the PT was to enable the ascertaining or regulating of the amount of energy supplied to the Respondent. This instrument namely the PT has, Therefore, to be regarded as a meter in view of the provisions of Sub-section (7) of Section 26 and the second proviso, in particular, and therefore the High Court was right in coming to the conclusion that the Electrical Inspector had the jurisdiction to exercise his powers u/s 26(7) of the Act. The order of the apple late authority, therefore, was rightly set aside.

20. It is clear that dispute in the present case which was raised by the consumer before the Electrical Inspector was fully covered by Section 26(6) and Electrical Inspector had full jurisdiction to determine the dispute and to found out the correct multiplying factor of the meter.

21. Sri H.P. Dube, relying on the judgment of the apex Court in the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, submitted that dispute regarding tempering of the seal is held outside the ambit of the provision. Following was laid down in paragraph 10:

10. The contention that the dispute regarding tampering of the seal of CT/PT terminal unit should have been referred to the Electrical Inspector, has hardly any merit. In Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, , it has been held that a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is one outside the ambit of Section 26(6) of the Indian Electricity Act and the Electrical Inspector has no jurisdiction to decide such cases of fraud. It was further held that u/s 26(6), the only dispute which can be decided by the Electrical Inspector is as to whether the meter is correct and is accurately recording the reading or there is some fault in the same. Since in the present case it has been found that the seal on the CT/PT terminal box had been tampered with and the natural working of the meter had been affected by taking recourse to external devices, a dispute of this kind cannot be referred to an Electrical Inspector.

22. The similar proposition was laid down by another judgment of the apex Court in Tata Hydro Electric Power Supply Co. Ltd. and Ors. v. Union of India 2003 (50)

ALR 742. Following was laid down in paragraphs 14,15 and 16:

14. It was urged before the High Court as also before us that having regard to the judgment of this Court in U.P.S.E.B. v. Atma Steel (supra) it is no longer open to the Appellant to contend that CT was not an apparatus within the meaning of Section 26(7) of the Act. Having perused the judgment of this Court in Atma Steel''s case (supra), we also entertain no doubt that CT is an apparatus within the meaning of Section 26(7) of the Act.

15. The question that still survives consideration is whether the dispute before the Umpire was in fact a dispute contemplated by Section 26(6) of the Act. Sub-section 6 of Section 26 begins with the words "where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector;.". Sub-section 6 contemplates a difference or dispute, where one party contends that the meter has rightly recorded the energy supplied while the other controverts that position and contends that it has not correctly recorded the supply of electrical energy. If such a dispute arises between the parties, the matter is required to be decided by an electrical inspector and it is he who can pronounce upon the question as to whether the meter was or was not correct. Based upon his finding, he is authorized to estimate the amount of the energy supplied during such time, not exceeding six months, as the meter shall not in his opinion have been correct. A dispute as to whether CT is an apparatus within the meaning of Sub-section 7 of Section 26 is not such a dispute, unless it is further contended that the CT which is an "apparatus" within the meaning of Sub-section 7 of Section 26 was in fact defective, and, therefore, the meter had incorrectly recorded the supply of electrical energy. In short, before an electrical inspector can be called upon to decide a dispute under Sub-section 6 of Section 26, it must be shown that while one party contends that the meter, including the CT, is defective the other contends to the contrary. In the facts of this case we find that there was in fact no dispute that the CT was defective and it had, therefore, to be replaced. In fact when the supplementary bill was submitted by the Appellant, the Western Railways did not dispute the position that the CT was defective, but only denied their liability to pay the amount of Rs. 8.89 crores demanded in the supplementary bill and contended that at best they were liable to pay only Rs. 12,20,740/- since demand for under registration by the meter could be permitted for a maximum period of 3 months of the demand as per the Power Supply Agreement. Considering the date of the bill as 26th July, 1993, the Respondent expressed its readiness to consider the period of under registration for a maximum period of three preceding months i.e. with effect from May, 1993 and wrote to the Appellant that if so advised it may submit a revised bill. It, therefore, appears that there was really no dispute between the parties that the meter was defective. Even if we proceed on the basis that CT is a meter/ apparatus within the meaning of Sub-section 7 of Section 26 of the Act, the only dispute was whether the Respondent was liable to pay the entire supplementary bill as claimed by the Appellant or whether their liability was limited to a period

of three months preceding the date of the bill.

16. Where there is no dispute that the meter is defective, such a dispute is not one contemplated by Sub-section (6) of Section 26 of the Act. It is no doubt true that if a dispute as contemplated by Sub-section (6) of Section 26 of the Act arises, the matter has to be referred to the Electrical Inspector, and in view of the statutory provisions, private arbitration in the case of such a dispute is not permissible in law. However, if there is no dispute as to whether the meter is defective or not, there is nothing which prevents the parties from referring their other disputes to arbitration for determining the liability of the consumer in such cases. It is only where any difference or dispute arises as to whether any meter referred to in Sub-section (1) of Section 26 is or is not correct, that dispute has mandatorily to be resolved by the Electrical Inspector. In resolving the dispute, the Electrical Inspector can make an estimate of the electrical energy supplied during such time, not exceeding six months, as the meter shall not in his opinion have been correct. For the remaining period, the register of the meter is deemed to be conclusive proof of such amount or quantity, in the absence of fraud. All this pre-supposes the existence of a dispute contemplated by Section 26(6) of the Act which has to be resolved by the Electrical Inspector.

23. Again in State of W.B. and Ors. v. Rupa Ice Factory (P) Ltd. and Ors. (2004) 10 SCC 635, it was held that when there was direct tapping line from transformer secondary site to the LT distribution mains bypassing the meter circuit, this was not a case to be considered u/s 26.

24. Another judgment relied by Bombay Electric Supply and Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and Another, Following was laid down in paragraph 9:

9. What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever.

25. There cannot be any dispute to the proposition that where the allegation of

tempering with the meter and abstraction of electricity from meter is alleged, Section 26 has no application. In the present case, the dispute was referred to Electrical Inspector after giving notice dated 2.9.1997. The dispute was as to whether the C.T. Ratio i.e. 20/5 and multiplying factor 400 and 4 as mentioned in the meter and sealing certificate on 11.7.1994 and 17th August, 1996 are correct or whether the C.T. Ratio as mentioned in the checking report dated 3.7.1996 as 30/5 and multiplying factor 600 and 6 are correct. Thus, the dispute was with regard to the correctness of the meter to measure the consumption of the electricity. Which of the C.T. Ratio and multiplying factor for correctly assessing the consumption of electricity had to be applied was an issue which was to be determined by checking and testing the meter. Thus, the issue between the parties was regarding correctness of the meter and was fully within the ambit of Section 26(6). Suggestion of Sri Dube that since on 11.9.1998 a checking report was prepared by the officials of the licensee and first information report was lodged when seals on the meter were found fake and consumer was indulging in theft of electricity, the jurisdiction of the Electrical Inspector is to be ousted, has to be considered in the above context. As held above, the Electrical Inspector rightly took cognizance of the dispute and issued notice fixing 10.9.1998 and 11.9.1998 for installation of check meter and alternate C.T. which was already submitted to the Director Electrical Safety by the licensee which was checked and was to be installed. 10th September, and 11th September, 1998 were the dates fixed for installation of the check meter information of which was already given by the Director Electrical Safety to the officers of the licensee.

26. The argument, which has been much pressed by Sri HP. Dubey, are that since in the checking held on 11th September, 1998 by the Executive Engineer and other officials of the licensee seal of meter and C.T. was found to be fake with regard to which a first information report was also lodged on 11th September, 1998 against the consumer and the proceedings which were initiated by the Electrical Inspector u/s 26(6) of the Indian Electricity Act, 1910 could not have been proceeded with since in the event any fraud or theft is detected, the Electrical Inspector loses jurisdiction u/s 26(6) of the Indian Electricity Act, 1910. The judgment of the Apex Court, as noted above, laying down that Section 26(6) of the Indian Electricity Act, 1910 has no application when fraud or theft of electricity is involved, has been referred to and relied by Sri Dubey. Thus the issue to be considered and answered is that what is the consequence and value of the checking report dated 11th September, 1998 and lodging of the first information report against the consumer.

27. From the facts, as narrated above, it is clear that Electrical Inspector has commenced the proceedings u/s 26(6) of the Indian Electricity Act, 1910 for determination of the correct C.T. ratio and multiplying factor on the complaint submitted by the consumer and reports were called from the official of the licensee. The letter dated 9th September, 1998 issued by the Director, Electrical Safety, U.P. has been brought on the record by the Petitioner (licensee) itself as Annexure-11 to the first writ petition by which letter the Executive Engineer was

informed that for installing the electronic reference standard meter of the Directorate and for installing the checked C.T. 10th September, 1998 and 11th September, 1998 respectively were fixed. On 10th September, 1998, Sri V.K. Mathur, Deputy Director, Electrical Safety and Sri Nand Kishore Pant, Assistant Director, Electrical Safety visited the premises of the consumer at 11.00 A. M. The checking and the installation of electronic reference standard meter of the Directorate was undertaken on 10th September, 1998 and the meter was installed in presence of the Executive Engineer, Assistant Engineer and Sub Divisional Officer of the licensee. A checking report dated 10th September, 1998 was prepared copy of which has been filed by the Petitioner (licensee) itself as Annexure-13 to the first writ petition. The Petitioner (licensee) itself in paragraph 29 of the first writ petition admitted that Respondent Nos. 4 and 5 installed their reference standard meter vide sealing certificate dated 10th September, 1998 in presence of Sri S.P.Singh, Executive Engineer, Electricity Test Division, Sri Sudhir Gupta, Assistant Engineer (Meters) and Sri Satish Chandra, Sub Divisional Officer. Annexure-13 to the writ petition, which is checking report duly signed by Executive Engineer, Assistant Engineer, Sub Divisional Officer, Deputy Director, Electrical Safety and Assistant Director, Electrical Safety mentions "existing metering panel including seals not disturbed". It is relevant to note the pleadings of the parties in the first writ petition with regard to events which took place on 10th and 11th of September, 2011:

Paragraph 29 of the first writ petition is extracted below:

29. That on 10.9.1998 the Respondent Nos. 4 and 5 installed their Reference Standard Meter vide Ceiling certificate dated 10.9.1998 in presence of Sri S.P. Singh, Executive Engineer, Electricity Test Division, Sri Sudhir Gupta, Asstt. Engineer (Meters) and Sri Satish Chandra, SDO. The Respondent Nos. 4 and 5 did not touch the existing metering panel including seals etc. and on the other hand installed Reference Standard Meter in series by connecting new 11 KV metering Panel with the existing metering panel. It is worthy to mention here that while installing Reference Standard Meter, Respondent Nos. 4 and 5 did not touch the existing metering panel in any manner. So far as the Petitioners are concerned, on 10.9.1998 the only thing was to be done was installation of the Reference Standard Meter and nothing more was to be done by the officials present on the site. True copies of the Circuit diagram as well as Sealing certificate dated 10.9.1998 are filed as Annexure-"12'' and "13'' to this writ petition.

Paragraphs 28,29,30 and 39 of the counter-affidavit filed by Rakesh Doneria in the first writ petition are extracted below:

28. That on 10.9.98 Shri S.P. Singh Executive Engineer, Shri Sudhir Gupta A.E. (Meter Testing), Shri Satish Chandra S.D.O., Shri S.C. Sharma Executive Engineer E.D.D. (Ill) Agra on behalf of Petitioner and Shri Nand Kishore Assistant Director and Shri V.K. Mathur Deputy Director on behalf of the Electrical Inspector visited the site of the unit of the answering Respondent. These officers,

after testing the seal of the existing meter and the seal on the lock of the meter room, prepared a design for installation of electronic reference standard meter in a new cubical.

29. That the entire exercise took about 12 hours starting from 11.00 A.M. till 11.30 P.M. After checking the reading of check meter for about half an hour, it was decided that further result of the testing be taken on 11.9.98 at 2.00 P.M. It may be submitted that during the half an hour checking by the newly installed electric check meter the MF factor of the disputed meter was found to be 400 and 4 and Court ratio 20/5. thereafter a sealing certificate duly signed by the aforesaid officers on behalf of the Petitioner and the two officers on behalf of Electrical Inspector was issued to the answering Respondent. A photocopy of the design prepared for the installation of the check meter and the sealing certificate are being filed herewith and marked as Annexures-CA 20 and 21 respectively to this counter-affidavit. It may also be submitted that after sealing the metering equipment the locks were put on the cubical as well as meter room by the officers of the Petitioner and the keys were handed over to the two officers present on behalf of Electrical Inspector. It may also be pointed out that the officers of the Petitioner also put their seals on the locks of the cubical and meter room.

30. That on 11.9.98 Shri Nand Kishore and Shri V.K. Mathur alongwith Shri Mukul Vaslas Junior Engineer of the Petitioner came to the unit of the Petitioner at 2.00 P.M. However, the Executive Engineers of the Petitioner who were required to be present at 2.00 P.M. did not turn up. the officers of the Electrical Inspector waited for them. However, the Executive Engineers of the Petitioner came at about 5.00 P.M. Thereafter the locks and seals were opened but due to none availability of electricity no reading of the electronic check meter could be recorded/The officials of the Petitioner went away on the pretext of getting the electric supply restored.

Subsequently it was discovered that electric supply of the answering Respondent was illegally disconnected by the Petitioner on 11.9.98 without any notice or information either to the answering Respondent or to the officials of the Electrical Inspector, reference in this connection may be made to the letter dated 11.9.98 of Shri V.K. Mathur Deputy Director Electrical Safety addressed to the Executive Engineer, Urban Distribution Division Agra and Executive Engineer Urban Test Division (Meter), Agra with a copy to the Superintending Engineer U.B.S.E.B., Agra, Chief Engineer Agra Zone and District Magistrate Agra asking to restore the electric connection of the answering Respondent and to present themselves on 12.9.98 at 11.00 A.M. for checking. A photocopy of the aforesaid letter is being filed herewith and marked as Annexure CA-22 to this counter-affidavit.

39. That the contents of paragraph 29 of the writ petition are again matters of record. The true and correct facts are that on the said date at about 11.00 a.m. the officers of the Petitioner in presence of the officers of the Electrical Inspector checked the seals/locks of the existing metering panel and found them to be

intact. Thereafter a design was prepared for installing a electronic check meter in the new cubical, parallel to existing old cubical to check the correctness/ multiplying factor of the disputed existing meter. Some objections were raised by the answering Respondent with regard to the design prepared for installation of the electronic check meter which was rectified by the officials of the Electrical Inspector. Thereafter the electronic check meter was installed and sealing certificate in respect of both the meters was issued. A perusal of the sealing certificate filed as Annexure-13 to the writ petition itself goes to show that the seals of the existing metering panel were found to be intact and there is no endorsement with regard to the seals being fabricated or forged. After the installing of the electronic check meter parallel to the existing metering equipment, the reading was taken after half an hour and thereafter it was decided to take further reading at 2.00 P.M. on 11.9.98. It may be submitted that after checking and recording the reading by the reference standard meter on 10.9.98 the Court ratio was found to be 20/5 and MF factor of 400 and 4.

28. The counter-affidavit filed by Rakesh Doneria (consumer) has been replied by the rejoinder affidavit filed by the licensee. Paragraphs 27 to 29 of the counter-affidavit has been replied in paragraph 19 of the rejoinder affidavit and paragraphs 30 to 33 of the counter-affidavit have been replied in paragraph 20 of the rejoinder affidavit and paragraphs 39 to 40 of the counter-affidavit have been replied in paragraph 24 of the rejoinder affidavit. Paragraph 19,20 and 24 of the rejoinder affidavit are quoted below:

19. That the contents of paras 27 to 29 of the counter-affidavit being matter of record do not call for any reply. However any inference drawn to the contrary to the record is liable to be rejected

20. That the contents of paras 30 to 33 of the counter-affidavit are false, incorrect and denied in reply thereto it is stated that on 11.4.1998 the official of Respondents went to the premises of Respondent No. 1 alongwith Electronic Secure Meter which was to be installed at the consumer''s premises in presence of the Electrical Inspector as directed by the Civil Judge, Agra vide its order dated 15.7.1998 for the purposes of installing Electronic Secure Meter the existing meter panel was sought to be opened by the officials of the Petitioner in presence of Electrical Inspector and then it was found that certain seals installed at the metering cubical were forged and fabricated. In pursuance thereto checking report was prepared but the consumer refused to sign on it and even the Respondent Nos. 4 and 5 refused to sign on the ground that they have no concern with the meter seal. In these circumstances Respondent No. 1 had indulged in theft of electrical energy.

24. That the contents of paras 39 and 40 of the counter-affidavit are denied and the facts stated in various paras including paras 29 and 30 of the petition are reiterated. However it is stated that F.I.R. was not forged and fictitious and the Respondents in order to cover up their misdeed and particularly theft of electrical energy have made vague assertions and thus they are liable to be rejected.

29. There is no denial that the inspection on 10th September, 1998 was held from 11.00 A.M. to 11.30 P.M.,- i.e. about 12 hours on which date the electronic reference meter was installed. The inspection report/sealing certificate dated 10th September, 1998 has been prepared with the signature of Executive Engineer, Assistant Engineer, Sub Divisional Officer, Deputy Director, Electrical Safety and Assistant Director, Electrical Safety which has been filed as Annexure-13 to the first writ petition. The said report specifically mentions, as noted above, "existing metering panel including seal not disturbed". From the pleadings, as noticed above, it is clear that on 11th September, 1998 at 2.00 P.M. was the time fixed for taking reading of the electronic reference standard meter reading of the electronic reference standard meter and the officials of the licensee did not turn up till 5.00P.M. and at 5.00 P.M. when they had turned up the electricity was not there and they went thereafter for restoration of electricity which was restored for short while and thereafter the electricity was disconnected. In this context, it is relevant to note Section 24(2) of the Electricity Act, 1910 which prohibits the licensee from disconnecting the electricity till Electrical Inspector gives his decision. This prohibition is for a purpose and object, i.e., when Electrical Inspector is held to be statutory authority for deciding differences or disputes between the consumer and the licensee regarding correctness of the meter, the licensee cannot obstruct the statutory inquiry by disconnecting the electricity during the course of inquiry. In the present case on 10th September, 1998 the checking was held for 12 hours in presence of the officials of the licensee and existing metering panel including seals were found not disturbed which report has been admittedly signed by the Executive Engineer and all the officials. There was no jurisdiction in the licensee to disconnect the electricity on the next date, i.e., 11th September, 1998, the action of the licensee in disconnecting the electricity on the next date was in violation of the express provisions of Section 24(2) of the Electricity Act, 1910.

30. The sequence of events which took place on 10th September, 1998 and thereafter on 11th September, 1998 including lodging of first information report by the Executive Engineer clearly indicate that the officers of the licensee adopted the aforesaid procedure and took steps to obstruct the proceedings initiated by the Electrical Inspector u/s 26(6) of the Electricity Act, 1910. In the present case, it is relevant that the alleged checking dated 11th September, 1998, which has been brought on the record by the licensee itself as Annexure-14 to the first writ petition, does not contain any signature either of Deputy Director, Electrical Safety or Assistant Director, Electrical Safety. The Deputy Director, Electrical Safety and Assistant Director Electrical Safety have neither signed the said report nor associated themselves with the lodging of the first information report. The signatures of the Deputy Registrar, Electrical Safety and Assistant Director, Electrical Safety were made on the complaint, which was submitted at the police station by the Executive Engineer. The Deputy Director, Electrical Safety as well as the Director, Electrical Safety have informed the Senior Superintendent of Police by letter dated 14th September, 1998

(Annexure-21 to the first writ petition) and the letter dated 17th October, 1998 (Annexure-22 to the first writ petition) that the Deputy Director, Electrical Safety as well as the Director, Electrical Safety have neither signed the first information report nor they support the version of alleged theft. It is relevant to note that in the checking dated 11th September, 1998, in the main column pertaining to meter sub column (t) which provided "Ihy ds ckjs esa fVli.kh" mentions "not checked as cubical not opened". In the same report at one place it was mentioned that seal not checked because cubical was not opened and in the right side of the report with regard to meter box seal and C.T chamber seal it was mentioned that impression in the seal does not match with the original plier, as such it is fake. The time of the checking as mentioned in the report is 15.30 hours to 18.45 hours.

31. The Electrical Inspector in his order dated 26th April, 1999 has decided the dispute holding that C.T. ratio was 20/5 as was mentioned in the meter in the year 1994 and the multiplying factor was also 400 and 4 and consequently bill prepared on the basis of C.T. Ratio 30/5 and multiplying factor 600 and 6 was not correct. In the appeal which was filed by the licensee u/s 36 of the Electricity Act, 1910, the State Government has recorded categorical finding that on 10th September, 1998 in presence of the parties the inspection took place for 12 hours and on 11th September, 1998 the officials of the electricity distribution came at 5.00 P.M. when the electricity was not there and after sometime they disconnected the electricity. The State Government recorded further a categorical finding that disconnecting the electricity was clear obstruction in the inquiry by the Electrical Inspector. It was also found that in the first information report forged signatures of Deputy Director, Electrical Safety as well as the Director, Electrical Safety were made. The State Government strongly condemned the conduct of the officials of the licensee. It is useful to extract the relevant part of the findings of the State Government in its appellate order dated 4th April, 2000, which are as under:

32. The findings recorded by the State Government in its appellate order are based on the materials on the record. The State Government also took into consideration the subsequent inspection dated 21st April, 1999 which took place in presence of a Magistrate, officials of the Directorate of Electrical Safety and the officials of the licensee in upholding the order of the Electrical Inspector that C.T. ratio and multiplying factor were 20/5 and 400 and 4 respectively. The sequence of events and the materials brought on the record, specially checking held on 10th September, 1998 which was signed by the Executive Engineer and the other officers of the licensee and not denied by anyone clearly prove that inspection was made in presence of all the parties on 10th September, 1998 and at that time existing metering panel including seal was found not disturbed. It has also come on the record that after completing the inspection on 10th September, 1998, on the next date 2.00 P.M. was fixed for checking the meter installed by the Directorate and the keys were with the checking staff. On the next date the case set-up by the licensee that its staff went to install a secure

meter as directed by the Civil Court''s order dated 15th July, 1998 and at that time checking was made and seal was found to be fake has no legs to stand as there was no occasion for installing any electronic secure meter as claimed by the licensee. The licensee has placed reliance on the order of the Civil Court passed on 15th July, 1998 as has been quoted in paragraph 25 of the writ petition. A perusal of the order, quoted in paragraph 25 of the writ petition, indicates that licensee was permitted to install electronic reference standard meter parallel to the existing meter with the condition that they will have concurrence of the Electrical Inspector and it will be installed in presence of the Electrical Inspector. Although the licensee has sent a C.T. and secure meter to the Electrical Inspector for checking which was checked but by letter dated 9th September, 1998 the Director, Electrical Safety wrote to the Executive Engineer that after checking the electronic reference standard meter of the Directorate shall be installed and checked C.T. shall also be installed on 10th September, 1998 and 11th September, 1998 respectively. Thus Electrical Inspector did not give concurrence for installing electronic secure meter of the licensee, rather it was decided by the Electrical Inspector that electronic reference standard meter of the Directorate shall be installed which actually was installed on 10th September, 1998 as is apparent from the report (Annexure-13 to the first writ petition) duly signed by the officials of the licensee. Thus there was no occasion for installation of any electronic secure meter and hence the whole case set-up by the licensee in its writ petition (first writ petition) that officials went on 11th September, 1998 to install electronic secure meter is without any basis and has been set up to obstruct the inquiry and the decision by the Electrical Inspector u/s 26(6) of the Electricity Act, 1910.

33. It is also relevant to note the letter dated 12th September, 1998 of the Executive Engineer addressed to the Deputy Director, Electrical Safety which has been replied by the licensee and has been filed as Annexure-16 to the first writ petition. By the said letter Sri M.C. Sharma, Executive Engineer asked the Deputy Director, Electrical Safety that electric connection of the consumer had been disconnected and since seals were found to be fake hence appropriate proceedings have been taken and electronic reference standard meter installed by the Deputy Director in the premises has become useless and the C.T. meter should be removed from the premises of the consumer. The said letter dated 12th September, 1998 makes the intention of the officials of the licensee very clear, they never wanted the electronic reference standard meter installed by the Deputy Director, Electrical Safety to remain in the premises so as the correctness of the meter or otherwise as complained by the consumer u/s 26(6) of the Electricity Act, 1910 be decided. All steps were taken by the officials of the licensee with intend to obstruct the decision u/s 26(6) of the Indian Electricity Act, 1910 and with the above intention and object they concocted the theory of fake meter seal and C.T. seal on 11th September, 1998 and lodged the first information report.

34. From the materials on the record, it is clear that initially the police had

submitted the final report, which was accepted by the First Additional Chief Judicial Magistrate against which criminal revision was filed by the licensee and the matter was remanded. The criminal case instituted on the basis of the first information report ultimately went to the trial and after completion of the trial, the Additional Chief Judicial Magistrate-I, Agra vide his judgment dated 4th June, 2010 in Case No. 508/01 has acquitted the consumer. Although in the judgment the first information report lodged by A.K. Garg, Junior Engineer was found to be false and based on wrong facts but for the purposes of this case we do not rest our judgment on any finding or judgment of the criminal Court.

35. From the above discussion, the conclusion is inescapable that the proceedings initiated u/s 26(6) of the Indian Electricity Act, 1910 were entitled to be brought to its logical end and on the basis of alleged checking dated 11th September, 1998 and the first information report lodged on 11th September, 1998, the dispute cannot be said to have gone out of the jurisdiction of the Electrical Inspector and the argument of Sri H.P. Dubey that the meter seal being fake and lodging of first information report takes away the jurisdiction of the Electrical Inspector u/s 26(6) has to be rejected.

36. The judgments, which have been relied by Sri Dubey do not help the licensee in the present case. In M.D. Alloys'' case (supra) officials of the Bihar State Electricity Board inspected the factory premises on 26th and 27th August, 1999 and found the seal fixed on CT/PT box tampered and first information report was lodged. In the said case a submission was made that faulty recording of the meter has to be judged from the standpoint of Section 26(6) of the Indian Electricity Act, 1910 which argument was rejected in paragraph 10 of the judgment, as quoted above. The said case was clearly a case of tampering of seal and theft of electricity and was not covered by Section 26(6). The said judgment was on its own facts and the same has no application in facts of the present case.

37. Similarly the judgment of the Apex Court in Tata Hydro Electric Power Supply''s case (supra) was again a case in which it was held that there was no dispute that C.T. was defective and the award was given by the Umpire which was under consideration. No proceedings u/s 26(6) of the Electricity Act, 1910 were initiated and the award was challenged under the Arbitration and Conciliation Act, 1996, Section 26(6) of the Indian Electricity Act, 1910, thus Was clearly not applicable, hence the said case has no application in the present case.

38. The judgment in the case of State of W.B. and Ors. v. Rupa Ice Factory was also a case where Central Vigilance Squad made a physical verification and found that there was a direct tapping line from the transformer. The said case was also not covered u/s 26(6) of the Indian Electricity Act, 1910 and the same has no application in the present case.

39. In Bombay Electricity Supply''s case (supra), it was held that when the meter is burnt or is completely non functional, Section 26(6) of the Indian Electricity

Act, 1910 is not applicable because a burnt meter or a non functional meter does not record any supply of energy. The said case is also clearly distinguishable and has no application.

40. Learned Counsel for the Petitioner (licensee) has submitted that Electrical Inspector has also referred to the order of the Additional Chief Judicial Magistrate by which final report was accepted which order was subsequently set-aside in criminal revision, hence the order was vitiated. We have gone through the order passed by the Director, Electrical Safety dated 26th April, 1999. The findings were recorded by the Director, Electrical Safety on the basis of reading taken on 10th September, 1998 and 11th September, 1998 and also the checking held on 21stApril, 1999. Although reference was made to the judgment of the Additional Chief Judicial Magistrate by which final report was accepted for holding that it was a case covered by Section 26(6) of the Indian Electricity Act, 1910 but in substance no error can be said to have been committed because ultimately the criminal case resulted in acquittal of the consumer.

41. In view of the aforesaid, we are of the view that there is no error in the order of the Electrical Inspector dated 26th April, 1999 and the appellate order of the State Government dated 4th April, 2000. It is to be noticed that a detail review application was also filed before the State Government which too was rejected on 27th May, 2000. Even the review application has been rejected and while rejecting the review application strong observations were made against the conduct and functioning of the officials of the licensee. The action of disconnecting the electricity on 11th September, 1998 has been strongly deprecated and condemned by the State Government.

42. Learned Counsel for the licensee has also placed reliance on the order dated 28th September, 1998 of the Regional Appellate Committee rejecting the appeal against the assessment of Rs. 12,58,895.84. The decision of the appellate committee has become ineffective in view of the statutory decision taken by the Electrical Inspector on 26th April, 1999 holding that supplementary bill on the basis of C.T. ration 30/5 and multiplying factor 600 and 6 was incorrect. The statutes empower the Electrical Inspector to decide dispute regarding correctness of meter and statutory decision having been taken u/s 26(6) of the Indian Electricity Act, 1910, the said decision has to be given its full effect and any decision by the appellate committee or the licensee to the contrary has to be ignored and cannot be given any credence.

43. In view of the foregoing discussions, we do not find any ground to interfere with the order of the Electrical Inspector dated 26th April, 1999 (Annexure-31 to the first writ petition) and the orders dated 4th April, 2000 and 27th May, 2000 of the State Government dismissing the appeal as well as review filed by the licensee. The first writ petition deserves to be dismissed.

44. It is relevant to note that in the first writ petition an interim order was passed on 25th July, 2000 to the effect "Operation of the impugned orders at

Annexure Nos. 37 and 39 of the writ petition, to the extent the same contain direction relating to the Officers of the Petitioner and the steps to be taken relating to the same, will remain stayed till the next date of listing". Now in view of the dismissal of the first writ petition, interim order dated 25th July, 200 shall automatically stand vacated and in view of the strong indictment made by the State Government of the officials of the Corporation and the facts as have been noticed above, we are of the view that licensee has to take action against the then erring officials.

45. Now comes the second (Writ Petition No. 50051 of 2007) filed by the consumer. The second writ petition has been filed praying for quashing the recovery certificate and the citation issued by the Tahsildar for recovery of an amount of Rs. 1,23,21,643/-. A counter-affidavit has been filed in the said writ petition by the licensee in which it has been stated that the amount sought to be recovered has been arrived at by adding interest and late payment surcharge in the assessment which was made on 15.9.1998 on the basis of checking dated 11.9.1998. As noted above, the assessment of Rs. 46,23,497/- was made by the Corporation on 15.9.1998 which was finalised on 13.10.1998 after rejecting the objection of the consumer. Writ Petition No. 4388 of 1998 was also filed challenging the assessment on the basis of checking dated 11th September, 1998 which writ petition was subsequently withdrawn on 30th November, 1998 and an appeal was also preferred by the consumer under Clause 23(2) of the Regulations, 1984 against the assessment order dated 13th October, 1998 which appeal was also dismissed on 4th May, 1999. It is the case of the licensee that in view of the order passed in Suit No. 943 of 1999 the steps for recovery of an amount of Rs. 46,23,497/ -were undertaken and since suit was dismissed in default on 2nd March, 2007, the recovery certificate and citation dated 21st August, 2007 has been issued for an amount of Rs. 1,23,21,643/-. Sri Dubey submits that proceedings for assessment dated 13th October, 1998 on the basis of checking dated 11th September, 1998 are independent proceedings and have nothing to do with the earlier supplementary bill issued on 25th August, 1996 and appeal against the said assessment having been dismissed, the Corporation is free to recover the same and the recovery certificate and the citation have rightly been issued. In paragraph 47 of the counter-affidavit filed in the second writ petition following has been stated:

47. That the contents of paragraph No. 19 of the writ petition are matters of record, and therefore, do not call for any specific reply. However, it is submitted that the recovery certificate has been issued by the Respondent No. 3 for a sum of Rs. 1,23,21,643.50 to the Collector, Agra. In the said amount of Rs. 1,23,21,643.50, the amount of assessment on the basis of theft for Rs. 46,23,577.50 and the late payment surcharge of Rs. 76,98,065.50 have been included. A copy of the recovery certificate dated 9.8.2007 issued by the Respondent No. 3 against the Petitioner is being annexed herewith and marked as Annexure CA-20 to this affidavit.

46. Thus the amount, which is sought to be recovered, is the amount of assessment of Rs. 46,23,497/- and the late payment surcharge. We, while deciding the first writ petition, have already held that checking of the meter undertaken on 10th September, 1998 by Deputy Director, Electrical Safety, Assistant Director, Electrical Safety, Executive Engineer and other officers of the licensee on which date exiting meter panel including seal were found not disturbed in 12 hours checking and no tampering of seal was found, rather report was submitted otherwise which was duly signed by the officers and on the next date the alleged checking report and the first information report alleging tampering of seal and theft of electricity have been found to be baseless and concocted with intend to obstruct the proceedings u/s 26(6) of the Indian Electricity Act, 1910. For the reasons given while deciding the first writ petition, we have categorically found that alleged checking dated 11th September, 1998 never took place in the premises and was concocted by the officers with intend to obstruct the proceedings and harass the consumer. The assessment of Rs. 46,23,497/- was based on such checking dated 11th September, 1998. As noticed above, the first information report which was filed on the basis of checking dated 11th September, 1998 has resulted in clear acquittal with the finding that allegations in the first information report were found to be false and untrue. When very basis of the assessment of Rs. 46,23,497/ - dated 13th October, 1998 has been found to be false and untrue to permit the recovery in consequence of said checking and assessment is against all cannons of justice. Thus the recovery proceedings including the recovery certificate, citation and all consequent action thereon deserve to be set-aside.

47. Now comes the third writ petition (Writ Petition No. 48947 of 2007). In the said writ petition, the Petitioner (consumer) has made a prayer to adjust the admitted amount of Rs. 1,95,575/- in the electricity bills issued after 30.11.2005 and to refund the excess amount of Rs. 3,08,91,900.75 with interest or to appoint an arbitrator with regard to the aforesaid amount and a compensation for loss resulting from interrupted supply of power.

48. Insofar as the adjustment of amount of Rs. 1,95,575/-is concerned which, according to the consumer, was admitted amount as per the bill dated 24th December, 2005 (Annexure-8 to the third writ petition), the licensee in paragraph 56 of its counter-affidavit has stated that the amount of Rs. 1,95,525/-, which was security amount of the consumer, had been adjusted in the bill of February, 2007 vide office memorandum dated 27th February, 2007. The consumer in his rejoinder affidavit has submitted that the said office memorandum has never been issued to the licensee. The consumer has also prayed for a mandamus commanding the Respondents to refund the excess amount of Rs. 3,08,91,900.75, details of which are claimed to have been mentioned in Annexure-24 to the third writ petition. It has already been held while deciding the first writ petition that that the Electrical Inspector vide his decision dated 26th April, 1999 u/s 26(6) of the Indian Electricity Act, 1910 held that C.T. Ratio was 20/5 and the multiplying factor was 400 and 4 and the claim

of the licensee that C.T. Ratio was 30/5 and multiplying factor was 600 and 6 was rejected. The said order has also been affirmed by the State Government on an appeal filed by the licensee. In view of the decision of the Electrical Inspector dated 26th April, 1999, the consumer was required to pay the electricity bill on the basis of C.T. Ratio 20/5 and multiplying factor 400 and 4. The order dated 26th April, 1999 having been upheld in appeal as well as in the first writ petition, the licensee is required to carryout the consequential exercise to revise the bills which were prepared on the basis of C.T. Ration 30/5 and multiplying factor 600 and 6 and were paid by the consumer, if the said adjustment has not yet been made. The said exercise is consequential to the decision given by the Electrical Inspector u/s 26(6) of the Indian Electricity Act, 1910.

49. In view of the aforesaid, we direct the Executive Engineer concerned to take decision regarding revision of the bills in consequence of the decision of the Electrical Inspector dated 26th April, 1999 within a period of two months from the date a certified copy of this order is produced before him. It goes without saying that the said revision shall confine to the bills which were prepared on the basis of C.T. Ration 30/5 and multiplying factor 600 and 6 and were paid by the consumer. The amount found to be excess may be either adjusted or refunded as may be deemed fit and proper. Insofar as the claim of refund of the amount of Rs. 3,08,91,900.75 as claimed by the consumer in Annexure-24 to the third writ petition, which also includes claim of compensation, is concerned, we are of the view that writ proceedings are not appropriate proceedings for adjudicating the loss or compensation. Thus the prayer of the consumer for refund of the aforesaid amount cannot be accepted except for the consequential revision of the bills as directed above. It is also relevant to note that consumer had also filed a claim before the National Consumer Dispute Redressal Forum, New Delhi being Original Petition No. 164 of 1999 which was dismissed by judgment and order dated 30th July, 2002 with the observation that the complaint required both documentary and oral evidence which was not possible in such summary jurisdiction. The National Consumer Dispute Redressal Forum dismissed the complaint leaving it open to the complainant to knock the door of Civil Court or any other forum for the relief prayed for. Thus, we also observe that claim for compensation or refund except to the extend as directed above, cannot be adjudicated in writ proceedings and the consumer is tree to agitate the same in competent Civil Court.

50. In the result, the first writ petition (Writ Petition No. 28504 of 2000) is dismissed with costs, the second writ petition (Writ Petition No. 50051 of 2007) is allowed with costs and the third writ petition (Writ Petition No. 48947 of 2007) is disposed of with the observations as made above.