Supreme Court of India
State Of U.P. And Ors vs Renusagar Power Co. And Others on 28 July, 1988
Equivalent citations: 1988 AIR 1737, 1988 SCR Supl. (1) 627
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
STATE OF U.P. AND ORS.

Vs.

RESPONDENT:
RENUSAGAR POWER co. AND OTHERS

DATE OF JUDGMENT28/07/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1737 1988 SCR Supl. (1) 627
1988 SCC (4) 59 JT 1988 (3) 141
1988 SCALE (2)238
CITATOR INFO :
R 1990 SC 334 (112)
F 1990 SC 820 (31)
R 1990 SC1277 (29,39,44,45)

ACT:
U.P. Electricity (Duty) Act, 1952-Whether Renusagar Power Co., respondent No. 1, is 'own' source of generation of electricity of Hindalco, respondent No. 2 under section 3(1)(c) of-Whether Hindalco is liable to pay electricity duty on that. footing-Whether corporate veil should be lifted in the facts of the case-Whether Hindalco is entitled to exemption from levy of electricity duty under sub-section (4) of section 3-Of.

HEADNOTE:
Disallowing request for exemption from levy of electricity duty under sub-section (4) of section 3 of the U.P. Electricity Duty Act, 1952 ('the Act'), as amended, the appellants issued notice of demand asking respondent No. 1, Renusagar Power Co., to pay electricity duty on the energy supplied by it to respondent No. 2, Hindalco, for industrial purposes. Being aggrieved by the decision of the State Government, the respondents filed a writ petition in the

High Court. The High Court allowed the writ petition, holding that the impugned order of the State Government was not maintainable in law, and quashing the order as well as the notice of demand abovesaid. The State Government was also directed to consider the request of the respondents for exemption in accordance with the directions issued by the High Court in the earlier Writ Petition No. 4521 of 1972 filed by the respondents. Being aggrieved by the decision of the High Court the appellants moved this Court for relief.

Disposing of the appeal, the Court,

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HELD: Per Sabyasachi Mukharji, J.

There were two different aspects of the case to be considered. One was whether the respondent No. 1, the Renusagar Power Co. Ltd., was 'own' source of generation of electricity for respondent No. 2, the Hindalco, under section 3(1)(c) of the Act. The second aspect was whether the order passed by the State Government was in accordance with the principles of natural justice in so far as the same were applicable to the case. [646C]

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From 1952 to 1970, no duty was payable if electricity was generated from own source of energy. From 1970 to 1973, duty of one paisa was payable in respect of electricity supplied from own source of generation. After 1973, no duty was payable in respect of electricity supplied from own source of generation. [646D]

Renusagar, a 100% subsidiary of Hindalco, wholly owned and controlled by Hindalco, was incorporated in March, 1964. Hindalco had established the power plant through the agency of Renusagar to avoid complications in the case of a possible take-over of the power plant by the State Electricity Board as power generation is generally not permitted in normal conditions in the private sector. The respondents highlighted that the sanction under section 28 of the Indian Electricity Act, 1910, given to Renusagar and its amendment established that Renusagar was not a normal type of sanction under Section 23 of the 1910 Act as the holder could supply power only to Hindalco. All these steps for the expansion of the power in Renusagar so as to match the power requirement of Hindalco's expansion were taken by Hindalco even though Renusagar had been incorporated. Applications for all the necessary sanctions and permissions were made by Hindalco. Permissions and sanctions were first intimated to Hindalco even though Renusagar was in existence. Changes in the sanctions and/or permissions were obtained by Hindalco and not Renusagar. The expansion of the power plant in Renusagar was to exactly match the requirements of Hindalco for the production of Aluminium. The expansion of the power plant in Renusagar was part and parcel of the expansion of the aluminium plant of Hindalco. All the steps to set up the power plant in Renusagar and its expansion were taken by Hindalco. Hindalco consumed about

255 MW power out of which 250 M W came from Renusagar. There was only one transmission line going out of Renusagar and that went to Hindalco, which had complete control over Renusagar. The agreement between Renusagar and Hindalco indicated this was not a normal sale-purchase agreement between two independent persons at arms length. The price of electricity was determined according to the cash needs of Renusagar. This covenant also showed complete control of Hindalco over Renusagar. All persons and authorities dealing and conversant with this matter had consistently treated Renusagar as own source of generation of Hindalco. In the power-cuts matter under section 22B of 1910 Act, 100% cut was imposed on Hindalco on the footing that it had its own source of generation. All the authorities including the State and Board had all along treated Renusagar as own source of generation of Hindalco. It was thus contended that Renusagar must he treated as alter ego of Hindalco, i.e.,
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Own source of generation of Hindalco within the meaning of section 3(1)(c) of the Duty Act, and that consumption clearly fell within that section. [653C-H; 655C-F]

'Own source of generation' is an expression connected with the question of lifting or piercing the corporate veil. The appellants contended that in this case there was no ground for lifting the corporate veil, urging that there was no warrant either in law or in fact to lift the corporate veil and treat Renusagar's plant as Hindalco's own source of generation. [657B-C]

In the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of legislation is to do justice to all the parties. The horizon of the doctrine of lifting corporate veil is expanding. In this case, indubitably, it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It was also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of takeover of the power station by the State or the Electricity Board. All the steps for establishing and expanding the power station were taken by Hindalco and Renusagar was wholly owned subsidiary of and completely controlled by Hindalco. Even the-today affairs were controlled by Hindalco. Renusagar had never indicated independent volition. Whenever felt necessary, the State or the Board themselves had lifted the corporate veil and treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. Indubitably, the manner of treatment of the power-plant of Renusagar as the power-plant of Hindalco and the Government taking full advantage of the same in the case of

power cuts and denial of supply of 100% power to Hindalco underlined the facts and implied acceptance and waiver of the position that Renusagar was a power plant owned by Hindalco. In this view of the matter, the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall under section 3(1)(c) of the Act. [667E-H; 688A-B]

The veil of corporate personality even though not lifted sometimes is becoming more and more transparent in modern company juris-

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prudence. The ghost of the case of Aron Salomon v. A. Salomon & Co. Ltd., [1897] AC 22 at 27, 30, 31, still visits frequently the hounds of Company Law but the veil has been pierced in many cases. However, the concept of lifting the corporate veil is a changing concept and is of expanding horizon. [668C-D]

The appellant was in error in not treating Renusagar's power plant as the power plant of Hindalco and not treating it as the own source of energy. The respondent was liable to duty on the same and on that footing alone; this was evident in view of the principles enunciated and the doctrine now established by way of decision of this Court in Life Insurance Corpn. Of India v. Escorts Ltd. & ors., [1985] Suppl. 3 S.C.R. 909, that in the facts of this case sections 3(1)(c) and 4(1)(c) of the Act are to be interpreted accordingly. The person generating and consuming energy were the same and the corporate veil should be lifted. Hindalco and Renusagar were in-extricably linked up together. Renusagar had in reality no separate and independent existence apart from and independent of Hindalco. Consumption of energy of Hindalco is consumption of Hindalco from its own source of generation. Rates of duty applicable to own source of generation had to be applied to such consumption-1 paisa per unit for the first two generating sets and nil rate in respect of 3rd and 4th generating sets. In the facts of this case, the corporate veil must be lifted and Hindalco and Renusagar should be treated as one concern and the consumption of energy by Hindalco must be regarded as consumption by Hindalco from own source of generation. The appeal directed against this finding of the High Court was rejected. [668D-H;669A-B]

Coming to the challenge to the order quashed by the High Court, the dominance of public interest is significant according to the provisions of sub-section (4) of Section 3. In view of the ceilings prescribed, the power conferred upon the State under Section 3(1) of the Act by itself is valid and does not amount to excessive delegation. The primary purpose of the Act was to raise the revenue for development projects. Whether, in a particular situation, rural

electrification and development of agriculture should be given priority or electricity or development of aluminium industry should be given priority or which is in public interest, are value judgments and the legislature is the best judge. What was paramount before introduction of the development programme and how the funds should be allocated and how far the government considers a negligible increase and rise in the cost of aluminium for the purpose of raising monies for other development activities are matters of policy to be decided by the Government. It is
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true that the question regarding public interest and need to promote indigenous industrial production was related with the question of exemption of duty, but a matter of policy should be left to the Government. In its order, the Government had adverted itself to all the aspects of sub-section (4) of section 3 of the Act. Certain amount of encouragement was given to Hindalco to start the industry in a backward area. After considerable period, a very low rate of duty was charged. If other sectors of growth and development are needed, for example, food, shelter, water, rural electrification, the need for encouragement to aluminium industry had to be subordinated by a little high cost because it is a matter on which the Government as representing the will of the people is the deciding factor. Price fixation, which is ultimately the basis of rise in cost because of the rise of the electricity duty is not a matter for investigation of Court, Sub-section (4) of section 3 of the Act in the set up is quasi-legislative and quasi-administrative in so far as it has power to fix different rates having regard to certain factors and in so far as it has power to grant exemption in some cases, is quasi-legislative in character. Such a decision must be arrived at objectively and in consonance with the principles of natural justice. With regard to the nature of the power under section 3(4) of the Act when power is exercised with reference to any class it would be in the nature of subordinate legislation but when the power is exercised with reference to individual it would be administrative. If the exercise of power is in the nature of subordinate legislation the exercise must conform to the provisions of the statute. The High Court was right only to the limited extent that all the relevant considerations must be taken into account and the power should not be exercised on irrelevant considerations, but singular consideration which the High Court had missed in this case is the factors, namely, the prevailing charges for the supply of energy in any area, the generating capacity of any plant, the need to promote industrial production generally or any specified class thereof and other relevant factors cannot be judged disjointly. These must be judged in adjunct to the public interest and that public interest is as mentioned in the preamble to raise revenue. All that the section requires is

that these factors should be borne in mind but these must be subordinate to the executive decision of the need for public interest. The power conferred on the State Government of administrative nature must be in accordance with the principles of natural justice to a limited extent. [671F-G; 672D-E; 673D-H]

The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly,if the power has
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been exercised on a non-consideration or non-application of mind to relevant factors, the exercise will be regarded as manifestly erroneous. If a power, legislative or administrative, is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. This case related to the particular facts and circumstances of an individual-Hindalco. The facts and circumstances of the case had been examined in consonance with the principles of natural justice and considered subject to public interest. Hindalco had made profits much more than it had before the imposition of the duty. The adequacy of the profits or whether it made much more profits is not a consideration which must prevail over public interest and the Government having taken into consideration this factor, did not commit any error and the High Court was in error in setting aside the order of the Government. The cost of power to a similar industry in other States was a relevant factor and the State was under a mandatory duty to consider the same. The State had taken note of all these factors, and considering the prevailing practice of levy of electricity duty in other States as well as the provisions of section 3(4), the Government came to the conclusion that there was no justification for allowing exemption from electricity duty to Hindalco, and did not commit any error. The factor of assurance of cheap power by the Government did not fore-close the public interest of raising public revenue. The impugned order did not suffer from the vice of non-application of mind or non-consideration of the relevant factors. The High Court was in error in interfering with the order of the Government in the manner it did. [676G-H; 677A-H; 678A]

Natural justice in the sense that a party must be heard before hand need not be directly followed in fixing the price. l here is scope for trial and error in the sphere of price fixation which is more in the nature of a legislative measure. Judged by that standard, the impugned order in this case was not bad. The Government did not act in violation either of the principles of natural justice or arbitrarily or in violation of the previous directions of the High Court. [678F; 679D; 680C]

The High Court should have, allowed the claim of Hindalco for the reduced rate of bill on the basis that

Renusagar Power plant was its own source of generation under section 3(1)(c) and the bills should have been made by the Board on that basis. The High Court was in error in upholding the respondents' contention that the State Government acted improperly and not in terms of section 3(4) of the Act and in violation of the principles of natural justice. The Judgment of the High Court was set aside to the extent indicated above and State Government's impugned order was restored subject to the modification of the bills on
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the basis of own source of generation; Hindalco must be given the benefit of the rate applicable to its own source of generation from Renusagar plant. [680D-F]

Per S. Ranganathan, J (Concurring): Agreeing, his Lordship held that on the second issue it was difficult to define the precise nature of the power conferred on the State under Section 3(4) of the Electricity Duty Act, and expressed doubts whether the sub-section could at all be interpreted as conferring a right on individual consumers to require that, in the light of the material adduced by them, the rates applicable to them should have been fixed differently or that they should have been exempted from duty altogether. However, his Lordship observed that it was unnecessary to pursue this aspect further as his Lordship agreed with the conclusion of Sabyasachi Mukharji, J. that in this case the respondent's representations had been fully considered and the requirements of natural justice had been fulfilled and that there was no warrant to interfere with the order of the State Government. [680H; 681A-B]

Chiranjit Lal Anand v. State of Assam & Anr., [1985] Suppl. 2 S.C.R. 385; State of U.P. v. Hindustan Aluminium Corpn. Ltd., [1979] 3 SCR 709; J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of V.P. & Ors., [1961] 3 SCR 185;M/s. Girdharilal & Sons v.BalbirNath Mathur & Ors., [1986] 2 SCC 237 at 241, 246; State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd., [1986] 3 SCC 91 at 100; D. Sanjeevayya v. Election Tribunal, A.P. & Ors., [1967] 2 SCR 489, 492; Western Coalfields Ltd. v. Special Area Development Authority, Korba & Anr., [1982] 2 SCR 1 at 17; Andhra Pradesh State Road Transport Corpn. v. The l.T.O. & Anr., [1964] 7 SCR 17; Tamlin v. Hannaford, [1950] KB 18; Aron Salomon v. A. Salomon & Co. Ltd., [1897] AC 22 at 27, 30, 31; Western Coalfields Ltd. in Rustom Cavasjee Cooper v. Union of India, [1970] 3 SCR 530 at 555; Bank Voordel En Scheepvaart N. V. v. Stalford, [1953] 1 Q.B. 248; Kodak Ltd. v. Clark, [1903] 1 K.B. 505; DHN Food Distributors Ltd. & Ors. v. London Borough of Tomer Hamlets, [1976] 3 AER 462; Harold Holdsworth & Co. (Wakefield) v. Caddies, [1955] 1 All E.R. 725; Scottish Co-operative Wholesale Society Ltd. v. Meyer and Anr., [1958] 2 All E.R. 66; Charterbridge Corpn. Ltd. v. Lloyds Bank Ltd. & Anr., [1969] 2 All E.R. 1185; Mrs. hall Richards Machine Co. Ltd., v. Jewitt (H.M.) Inspector of Taxes, 36 TC 511, 52, 525, M/s. Spencer & Co.

Ltd., Madras v. The Commissioner of Wealth Tax, AIR 1969 Madras 359; Turner Morrisson & Co. Ltd. v. Hungerford Investment Trust Ltd., AIR 1969 Cal. 238; Life Insurance Corpn. Of India v. Escorts Ltd. & Ors., [1985]
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Suppl. 3 SCR 909; Devi Das Gopal Krishnan & Ors. v. State of Punjab & Ors., [1967] 3 SCR 557; Ram Bachan Lal v. The State of Bihar, [1967] 3 SCR 1; Panama Canal Company v. Grace Line, 356 U.S. 309 2 Lawyers' Edn. 788; Vincent Panikurlangara v. Union of India & others, [1987] 2 S.C.C. 165; Union of India & Anr. v. Cynamide India Ltd. & Anr., [1987] 2 SCR 720; P.J. Irani v. State of Madras , [1962] 2 SCR 169 at 179-180, 181, 182; Ryote of Garabandho and Ors. v. Zamindar of Parlakimedi & Anr., AIR 1943 P.C. 164; Saraswati Industrial Syndicate Ltd. etc. v. Union of India, [1975] 1 SCR 956; A. K. Kraipok v. Union of India, AIR 1970 S.C. 150; M/s. Travancore Rayons Ltd. v. Union of India, AIR 1971 S.C. 862; Amal Kumar Ghatak v. State of Assam & Ors., AIR 1971 Assam 32; Commissioner of Income Tax v. Mahindra & Mahindra Ltd. & Ors., [1983] 3 SCR 773 at 786, 787; Prag Ice
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293; Shree Meenakshi Mills Ltd. v. Union of India, [1974] 2 SCR 398; Laxmi Khandsari, etc. v. State of U.P. & Ors., [1981] 3 SCR 92; State of Orissa v. (Miss) Binapani Devi, [1967] 2 SCR 625; Mohd. Rashid v. State of U.P., AIR 1979 S.C. 592; S. L. Kapoor v. Jagmohan & Ors., AIR 1979 S.C. 592; Maneka Gandhi v. Union of India, AIR 1978 S.C. 597; India Sugars & Refineries Ltd. v. Amrawathi Service Co-operative Society Limited & Ors., [1976] 2 SCR 740, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2966 of 1986.

From the Judgment and Order dated 26.9.1984 of the Allahabad High Court in Writ Petition No. 3921 of 1982.

R.N. Trivedi, Additional Advocate General, Gopal Subramaniam and Mrs. Shobha Dikshit for the Appellants.

B. Sen, D.P. Gupta, N.A. Raja Ram Aggarwal, N.R. Khaitan, E.D. Desai, Y.K. Khaitan, Jijina, Sandeep Aggarwal and T.N. Sen for the Respondents.

The following Judgments of the Court were delivered: SABYASACHI MUKHARJI, J. This appeal by special leave is directed against the judgment and order of the High Court of Allahabad dated 26th September, 1984. The first appellant is the State of Uttar Pradesh impleaded through the Chief Secretary to the Government of Uttar Pradesh, Lucknow. The second appellant is the Secretary to the Government of Uttar Pradesh, Department of Energy, Lucknow. The third appellant is one Shri Yogendra Narain, presently acting as Secretary to the Chief Minister, State of Uttar Pradesh, Lucknow. At a particular point of time Shri Yogendra Narain was the Secretary to the Department of Energy. The fourth appellant is the Assistant Electrical Inspector, a functionary under the U.P. Electricity (Duty) Act, 1952, Mirzapur Zone, Rani Patti, Mirzapur. The fifth appellant is the Collector

of Mirzapur.

There are four respondents in this appeal. The first respondent is Renusagar Power Company Ltd. The second respondent is M/s Hindustan Aluminium Corporation Ltd. Respondent No. 3 is Shri D.M. Mimatramka who resides at Hindalco Administrative Colony, Renukut, Mirzapur. The fourth respondent is Shri Rajendra Kumar Kasliwal who resides at Hindustan Aluminium Corporation Ltd., Renukut, District Mirzapur. Respondents 3 and 4 mentioned above are the shareholders of the first respondent and the second respondent, that is, Renusagar Power Company and M/s. Hindustan Aluminium Corporation Ltd. respectively. It is stated that M/s Hindustan Aluminium Corporation Ltd., established and aluminium factory at Renukut in Mirzapur District, U.P. in 1959. It is the case of the respondents that it was induced to do so on the assurance that cheap electricity and power would be made available at the relevant time. In 1962, a plant of Hindustan Aluminium Corporation Ltd. for manufacture of aluminium, was commissioned. M/s Renusagar Power Co. Ltd. a wholly owned subsidiary of M/s Hindustan Aluminium Corporation Ltd, was incorporated in 1964. M/s Renusagar Power Company Ltd. was incorporated separately and had its own separate Memorandum and Articles of Association. On 9th September, 1967, the first generating unit of 67.5 MW in Renusagar was commissioned by M/s Renusagar Power Company Ltd. The second generating unit of the company was commissioned on 5th October, 1968. The U.P Electricity (Duty) Act, 1952 (hereinafter called 'the Act') came into force from 15th January, 1953 and it sought to levy a duty on the consumption of electrical energy in the State of Uttar Pradesh.

In the Statement of Objects and Reasons, which was published in U.P. Gazette, it was stated that the programmes of development of the State involved enormous expenditure and. thus additional resources had to be raised, the bulk of which could only be raised by means of fresh taxation. It was stated that the object of the Bill, inter alia, provided as follows:

> "A tax on the consumption of electrical energy will impose a negligible burden on the consumer and is a fruitful source of additional revenue. The Bill has been so prepared as to ensure that the tax payable by a person will be related to the quantity of electricity consumed by him. The Bill is being introduced with the above object. "

By virtue of the provisions of the U.P. Electricity (Duty) (Amendment) ordinance, 1959 various amendments were carried out in the said Act. In section 2 of the principal Act, a new clause, clause (hh) describing a scheduled industry was inserted. By virtue of the aforesaid newly inserted clause, the expression 'scheduled industry' meant any of the industries specified in the schedule. In the proviso to section 3 of the principal Act, after clause (d), a new clause (e) was inserted which provided for non-levy or exemption from the payment of electricity duty on the energy consumed by a consumer in a scheduled industry. The. expression which was added was "by a consumer in a scheduled industry". By virtue of section 8 of the Amending Act, a schedule was added to the principal Act. In the schedule, non-ferrous metals and alloys were placed at serial No. 1 in Part of the schedule under a broad heading 'Metallurgical Industries'. It appears, therefore, that by virtue of the aforesaid provisions electricity duty on the energy consumed by M/s Hindustan Aluminium Corporation Ltd. was exempted from 1st April, 1959, the date on which the ordinance came into force. It was further stated that the U.P. Electricity (Duty) (Amendment) ordinance, 1959 was

repealed and the provisions were incorporated into an amending Act, viz., U.P. Act No. 12 of 1959 and termed as the U.P. Electricity (Duty) (Amendment) Act, 1959. By virtue of sub-section (2) of section 1, the Amendment Act provided that the Act would be deemed to have come into force with effect from 1st April, 1959. The amendment Act repealed the provisions of the U.P. Electricity (Duty) (Amendment) ordinance, 1959. In section 2, after clause (d), the clause which was inserted as a new clause (e) provided that electricity duty would not be leviable on the consumption of energy by a consumer in any industry engaged in the manufacture, production, processing, or repair of goods. Ordinance No. 14 of 1970 was promulgated on 5th August, 1970. The provisions contained in the ordinance were subsequently incorporated in U.P. Act No. 2 of 1971. The amended provisions of U.P. Act No. 2 of 1971 came into force from 1st April, 1970. The Amendment Act was preceded by U.P. Ordinance No. 14 of 1970. The ordinance was described as "the Uttar Pradesh Taxes and Fees Laws (Amendment) ordinance 1970. "By virtue of Chapter III of the said ordinance, amendments were sought to be made to the Act. Section 3 of the principal Act was substituted by a new section which provided that there would be levied and paid to the State Government a duty called electricity duty on the energy sold to a consumer by a licensee/Board/the State Government the Central Government; there would be a duty on the consumption of energy by a licensee or the Board in or upon the premises used for commercial or residential purposes, or in or upon any other premises except "in the construction, maintenance or operation of his or its works", and there would be a duty upon the consumption of electricity by any other person from "his own source of generation." It was provided that a duty was to be determined at such rate or rates as may, from time to time, be fixed by the State Government by notification in the official gazette. Sub-section (2) of section 3 provided that in respect of certain classes of consumption the electricity duty would not exceed 25% of the rate charged.

It may be expedient to refer to the Prefatory Note of the Act which, inter alia, is as follows:

> "Prefatory Note: The minimum programme of development which this State must carry out within the next three or four years for the attainment of the objective of a welfare State is set out in the Five Year Plan drawn up by the Planning Commission. This plan provides for an expenditure of 13.58 crores of rupees on power development projects. Such a huge expenditure cannot be met from our present resources. It is, however, essential for the welfare of the people that the expenditure should be incurred and that nothing should be allowed to stand in the way of the progress of the plan. Additional resources have therefore to be found, the bulk, of which can be raised only by means of fresh taxation." Section 3 of the Act provides as follows: "3. Levy of electricity duty.-(1) Subject to the provisions hereinafter contained, there shall be levied for and paid to the State Government on the energy:
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> (a) sold to a consumer by a licensee, the Board, the State Government or the Central Government; or
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> (b) consumed by a licensee or the Board in or upon premises used for commercial or residential purposes, or in or upon any other premises except in the construction, maintenance or operation of his or its works; or

(c) consumed by any other person from his own source of generation; a duty (hereinafter referred to as 'electricity duty') determined at such rate or rates as may from time to time be fixed by the State Government by notification in the Gazette, and such rate may be fixed either as a specified percentage of the rate charged or as a specified sum per unit.

Provided that such notification issued after October 1, 1984 but not later than March 31, 1985 may be made effective on or from a prior date not earlier than October 1, 1984.

(2) In respect of clauses (a) and (b) of sub- section (1), the electricity duty shall not exceed thirty-five per cent of the rate charged.

Provided that in the case of one-part tariff where the rate charged is based on units of consumption, the electricity duty shall not be less than one paisa per unit or more than eight Paisa per unit.

Explanation-For the purposes of the calculation of electricity duty as aforesaid, energy consumed by a licensee or the Board or supplied free of charge or at the concessional rates to his or its partners, directors, members, officers or servants shall be deemed to be energy sold to consumers by the licensee or the Board, as the case may be, at the rates applicable to other consumers of the same category.

(3) In respect of clause (c) of sub-section (1), the electricity duty shall not be less than one paisa or more than six paisa per unit.

(4) The State Government may, in the public interest, having regard to the prevailing charges for supply of energy in any area, the generating capacity of any plant, the need to promote industrial production generally or any specified class thereof and other relevant factors, either fix different rates of electricity duty in relation to different classes of consumption of energy or allow any exemption from payment thereof.

(5) No electricity duty shall be levied on-

(a) energy consumed by the Central Government or sold to the Central Government for consumption by that Government; or

(b) x x x

(c) energy consumed in the construction, maintenance or operation of any railway by the Central Government or sold to that Government for consumption in the construction, maintenance or operation of any railway;

(d) by a cultivator in agricultural operations carried on in or near his fields such as the pumping of water for irrigation, crushing, milling or treating of the produce of those fields or chaffcutting.

(e) Energy consumed in light upon supplies made under the Janta Service Connection Scheme. Explanation.-For the purposes of clause (e) "Janta Service Connection Scheme" means a scheme approved by the State Electricity Board for supplying Energy to Harijans, landless labourers, farmers (holding land not exeeeding one acre), members of armed forces (whether serving or retired), war widows and other weaker sections in district notified by the State Government." Section 4 of the Act read as follows: "4. Payment of electricity duty and interest thereon.-(1) The electricity duty shall be paid, in such manner and within such period as may be prescribed, to the State Government.

(a) where the energy is supplied or consumed by a licensee,-by the licensee;

(b) where the energy is supplied by the State Government or the Central Government or is supplied or consumed by the Board,-by the appointed authority; and

(c) where the energy is consumed by any other person from his own source of generation,-by the person generating such energy.

(2) Where the amount of electricity duty is not paid by the State Government within the prescribed period as aforesaid, the licensee, the Board or other person mentioned in clause (c) of sub-section (1), as the case may be, shall be liable. to pay within such period as may be prescribed, interest at the rate of eighteen per cent per annum on the amount of electricity duty remaining unpaid until payment thereof is made. " Section 9 of the Act provides as follows: "Exemptions. Nothing in this Act shall apply to any energy generated by a person for his own use or consumption or to energy generated by a plant having a capacity not exceeding two and a half killowatts."

M/s. Renusagar Power Company Ltd. had in the meantime obtained a sanction under section 28 of the Indian Electricity Act, 1910 to engage in the business of supply of electricity to the second respondent, M/s. Hindustan Aluminium Corporation Ltd. By virtue of section 2(f) which defines a licensee for the purposes of the Duty Act to mean any person licensed under Part II of the Indian Electricity Act, 1910 and includes any person who has obtained sanction from the State Government under section 28. Renusagar Power Company Ltd., the first respondent herein, was deemed to be a-licensee for the purposes of the U.P. Electricity (Duty) Act. By virtue of section 2(d) of the Act, M/s. Hindustan Aluminium Corporation Ltd. was a consumer since it was supplied energy by the licensee, M/s. Renusagar Power Company Ltd., the first respondent. Thus, the consumption of electricity by M/s. Hindustan Aluminium Corporation Ltd. under a contract of sale by the licensee was exigible to duty. In other words, clause (a) of sub-section (1) of section 3 of the Act, as amended, came into operation and a levy of duty would take place on the energy sold, to a consumer by a licensee. Clause (a) of sub-section (1) of section 4 as newly added provided that where the energy

was supplied by a licensee, the licensee would be liable to pay electricity duty. Thus, by virtue of the amended provisions of the Electricity (Duty) Act, M/s. Renusagar Power Co. Ltd. the first respondent herein was liable to pay electricity duty in respect. Of its supplies to M/s. Hindustan Aluminium Corporation Ltd.

In exercise of the powers conferred by the Amendment Ordinance (U.P. Ordinance No. 14 of 1970, the provisions of which were re-enacted in U.P. Act No. 2 of 1971), the Governor on or about 25th August, 1970 passed an order that with effect from 1st September, 1970 the electricity duty on industrial consumption would be levied at one paisa per unit. On 28th August, 1970, the Governor ordered in supersession of all the previous orders that with effect from 1st September, 1970 electricity duty on the energy consumed by the consumers would be levied at the rates specified therein. There was further notification dated 30th September, 1970, issued in the name of the Governor modifying the terms of the notifications dated 25th August, 1970 and 28th August, 1970.

On or about 4th December, 1952 after the inauguration of the First Five Year Plan, electricity duty was imposed to gather additional revenue for attaining the objectives set out in the plan. The U.P. Electricity (Duty) Act, 1952 was enacted on 4th December, 1952. On 1st April, 1959 in order to mitigate the hardship which might be caused to certain industries in the State, the U.P. Electricity (Duty) (Amendment) Ordinance, 1959 (U.P. Ordinance No. 3 of 1959) was promulgated by the Governor of U.P. By the aforesaid ordinance it was provided in the first proviso to section 3 of the principal Act that no duty shall be leviable on the energy consumed by a consumer in a Scheduled Industry, including Non-ferrous Industries manufacturing Aluminium like that of respondent No. 2, Hindalco. The aforesaid ordinance was substituted by the U.P. Electricity (Duty) (Amendment) Act, 1959 (U.P. Act No. 12 of 1959). It substituted sub-clause (e) in the first proviso of section 3 which reads as follows:

> "(e) by a consumer in any Industry engaged in the manufacture, production, processing or repairs of goods".

In the year 1959 respondent No. 2 looking to the profitability of establishing a factory for manufacture of aluminium, set up a plant at Renukut, District Mirzapur in the State of U.P. On or about 29th October, 1959 an agreement was arrived at with the State Government and the Hindustan Aluminium Corporation Ltd. (Hindalco) for supply of 55 M.W. electrical power at the rate of 1.997717 paise per unit inclusive of all charges. duties and taxes of whatever nature on electricity for 25 years.

In the year 1962 Hindalco, respondent No. 2, started production of aluminium. On 14th October, 1964 respondent No. 2 requested the State Government to grant sanction to the Renusagar Power Company Ltd., to supply electricity to respondent No. 2. On 12th November, 1964 respondent No. 1 Renusagar Power Company Ltd. was granted sanction under section 28 of the Indian Electricity Act, 1910, to engage in the business of supply of electricity to respondent No. 2 Hindalco. There was an agreement on 29th December, 1967 with Hindalco and U.P. State Electricity Board to supply 5.5 M.W. and 7.5 M.W. Of power. The rate of charges along with levy of sales tax, etc. were to be paid by the consumer. On 1st July, 1970, there was an agreement between Hindalco and State Electricity

Board to supply 7.5 M.W. Of power. The rate of charges including levy such as Sales Tax etc. were to be paid by the consumer. On 5th August, 1970, the U.P. Ordinance No. 14 of 1970 was promulgated further to amend the U.P. Electricity (Duty) Act, 1952 which came into force from 1st September, 1970. By the aforesaid amendment provisions of sections 3, 4 and 7 were substituted by new sections, sections 3A and 9 were omitted and there were several amendments in various sections of the original Act. As a result of the promulgation of the ordinance, electricity duty became leviable on the industrial consumption as well as on the energy consumed by any person from his own source of generation. The provisions of section 3 have been set out before. Thereafter notification was issued on 25th August, 1970 under which rate of electricity duty on the energy consumed for industrial purposes was prescribed at one paisa per unit on consumption of electricity with effect from 1st September, 1970. On 1st September, 1970, the provisions of the ordinance amending U.P. Electricity (Duty) Act, 1952 came into force. Electricity duty became leviable on the respondent No. 1 on the energy supplied to Hindalco, respondent No. 2 for the industrial purposes. On 28th September, 1970 respondent No. 2, Hindalco, made an application under sub-section (4) of section 3 of the Act to the State Government to grant exemption on the energy supplied by respondent No. 1 to respondent No. 2 for industrial purposes. On 17th January, 1971 ordinance No. 14 of 1970 was substituted by the U.P. Electricity (Duty) (Amendment) Act, 1970. On 26th February, 1971 report was made by the Three-Men Committee appointed to examine the request of Hindalco for grant of exemption from payment of electricity duty on the energy supplied by Renusagar Power Company Ltd. According to the Committee the burden as a result of the imposition of electricity duty did not result in substantial or insufferable increase of the rate of duty for Hindalco. On 27th August, 1971 a demand for payment of electricity duty amounting to Rs.59,13,891.80 was raised on respondent No. 1. On 29th March, 1972 application of respondent No. 2 for grant of exemption was rejected by the State Government on the following reasons:

> "(a) That the intention of the legislation was clear to withdraw the exemption from payment of electricity duty on the industrial consumers with effect from 1.9.1970 the facility of which was being availed for a period of more than 11 years.
>
> (b) That the applicant was never given any assurance that he will be exempted from electricity duty nor the applicant is entitled for any exemption as a matter of right under the provisions of the amended Act.
>
> (c) That it was not in public interest to grant them exemption from electricity duty.
>
> (d) That the electricity duty is also being levied on the Aluminium Industries in other States also.
>
> (e) That the additional resources are taken into account to give the final shape of the State Development Plans and with a view to fulfil the requirement of these Development Plans the Electricity Duty Act was amended in 1970. The expected income from this duty is essential for the execution of State Government plans.

(f) It cannot be inferred that the imposition of electricity duty will be an unbearable burden on Hindalco."

Aggrieved by the aforesaid rejection, the respondents filed Writ Petition No. 4521 of 1972 before the High Court of Allahabad. On 17th March, 1973 the State Government granted exemption from payment of electricity duty on the energy consumed by any person from his own source of generation. Exemption was also granted on the energy sold to a consumer establishing a factory having capital investment upto Rs.25 laks in the backward district for five years.

The High Court by its judgment on 17th May, 1974 in the Writ Petition No. 4521 of 1972 quashed the order of the State Government and directed the State Government to reconsider the application of the respondents for exemption in the light of the observations made in that judgment. On 6th September, 1975 Hindalco submitted an application again to the State Government for reconsideration of their previous application for exemption from payment of electricity duty. In the meanwhile, the State Government filed a special leave petition to this Court against the judgment and order of the High Court of Allahabad dated 17th May, 1974 in Writ Petition No. 4521 of 1972. In the meantime of 13th November, 1976 an agreement was entered into between the State Electricity Board and Hindalco for supply of 85 M.W. main supply. The rate fixed was 11 paise per unit inclusive of all taxes of whatever nature on electricity. Special leave petition was, however, dismissed on 28th March, 1977. In compliance with the High Court's judgment dated 17th May, 1974, on 5th April, 1977 respondents were given an opportunity of hearing by the State Government. For the purpose of considering the representation and to verify the correctness of the data and the profit and loss accounts furnished by Hindalco in their printed Balance Sheets the matter was got examined by Shri B.B. Jindal, Controller of Banking operations, U.P. State Electricity Board who submitted his report in 1977. The State Government, however, was not satisfied with the report of Shri B.B. Jindal. On 6th September, 1978 the matter was got re-examined by the Chief Electrical Inspector to Government, Uttar Pradesh. He submitted his report. The Chief Electrical Inspector in his report compared the cost of power of Hindalco with similar industries in other States. On 5th December, 1978 Secretary of Power discussed the matter with Dr. R. Rajagopalan, Chief Advisor (Costs), Government of India. Then a note was prepared by the Secretary, Power, Government of U.P. in which reference was made to the above report of Chief Electrical Inspector to the Government of U.P. Thereafter the Chief Secretary to the Government of U.P. On 26th December, 1978 wrote a letter to the Secretary, Ministry of Finance, Government of India, requesting him that the matter may be got examined by the Chief Advisor (Costs), Government of India, expeditiously. After examination on 29th January, 1979 Dr. R. Rajagopalan, Chief Advisor (Costs), Government of India, submitted his report that the effect of imposition of electricity duty on the margin of profit available to Hindalco has been very insignificant. It did not have any adverse effect on the profitability of Hindalco since such a levy has been included in the cost in fixing the selling prices of Hindalco's products by the Government of India. Imposition of electricity duty did not result in reducing the normal profits of Hindalco to either an absolute loss or such a small margin of profit that Hindalco was turned into an uneconomic unit. According to him the claim of Hindalco for exemption from levy of electricity duty is not based on justifiable grounds of either low profitability or incapacity of resources with which to pay. Personal hearing was given to the respondents in view of the directions given by the High Court. Report of Dr. Rajagopalan was made available to the

respondents. On 28th January, 1980 rate of electricity duty on the energy consumed for industrial purposes was revised from one paisa to two paise per unit applicable from the date of notification, that is, from 16th February, 1980. There was an agreement on 24th April, 1980 between the State Electricity Board and the Hindalco regarding 85 M.W. main supply and 60 M.W. stand by Emergency Supply. Rate of 28.42 paise per unit was fixed. A personal hearing was given to the respondents in compliance with the directions issued by the High Court. Respondents were allowed to inspect the report of the Chief Electrical Inspector and other reports available with the State Government were shown to them and they submitted their comments on the report of Dr. Rajagopalan which were duly considered by the State Government. A personal hearing was again given to the respondents to submit their submissions in support of their application for exemption. Respondents were represented by counsel during the course of hearing. After giving full consideration to the submissions made in the original and additional representations and the comments dated 23rd August, 1980 on the report of Dr. Rajagopalan and to the entire material placed before the State Government, the State Government came to the conclusion that the claim for exemption from levy of electricity duty was not at all justified on any ground whatsoever. Accordingly the request for exemption was disallowed. On 3rd March, 1982 respondent No. 1 was asked to pay Rs.11,96,83,153.80 as the amount of electricity duty on the energy supplied by it to respondent No.. 2 for industrial purposes. Respondent No. 1. however, failed to pay the aforesaid amount within the stipulated time. On 22nd March, 1982, the District Magistrate, Mirzapur, was requested to recover the said amount as arrears of land revenue. Being aggrieved by the decision of the State Government, the respondent filed a Writ Petition No. 3921 of 1982 in the High Court of Allahabad and the High Court issued stay order directing the petitioners not to take any proceedings for the recovery of the impugned electricity duty. On 26th September, 1984 the High Court allowed the Writ Petition No. 3921 of 1982 and held that the impugned order of the State Government was not maintainable in law and hence quashed the order of the State Government as well as the notice of demand dated 3rd March, 1982. The State Government was also directed to consider the request of the respondents for exemption in accordance with the directions issued by the Division Bench in Writ Petition No. 4521 of 1972 and also in the light of the observations made in the judgment after affording an opportunity of personal hearing to the respondents. Being aggrieved thereby the appellants have come up in appeal to this Court.

In the background of the facts and the circumstances set-out. hereinbefore, we have now to examine the correctness of the judgment and order of the High Court which is under appeal. There are two different aspects. One is whether the Renusagar Power Co. Ltd., was 'own' source of generation of electricity for the Hindalco, in the facts and circumstances of the case. The second aspect is whether the order passed by the State Government, having regard to the nature of the order passed, was in accordance with the principles of natural justice in so far as the same were applicable to the facts of this case. As it is apparent on the state of law mentioned hereinbefore from 1952 to 1970 no duty was payable if electricity was generated from own source of energy. From 1970 to 1973 duty of one paisa was payable in respect of electricity supplied from own source of generation. However, after 1973 no duty was payable in respect of electricity supplied from own source of generation.

'Own source of generation is an expression connected with the question of lifting or piercing the corporate veil. It is well-settled that in interpreting items in statutes whose primary object is to raise

revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to the meaning attached to them by those dealing in them. See the observations of this Court in Chiranjit Lal Anand v. State of Assam & Anr., [1985] Suppl 2 SCR 385.

As mentioned hereinbefore, the application for exemption was made after disposal of the first writ petition No. 4521/72 by the High Court on 17th May, 1974. Thereafter, the respondent made another application for exemption under section 3(4) of the Act. The said application was ultimately rejected, which rejection was subsequently challenged. The High Court in the judgment under appeal on 26th September, 1984 has set aside me order of rejection passed by the State Government.

Was the High Court right, is the question involved in this appeal.

Examination of this question involves two aspects, namely, what is the rate of duty under which various notifications were applicable to the energy consumed by Hindalco from Renusagar. Is Renusagar "own source of generation" of Hindalco within the meaning of section 3(1)(c) of the Electricity Duty Act, 1952 and the various notifications issued thereunder. The question whether Renusagar was "own source of generation" of Hindalco, is a mixed question of law and facts as correctly contended by Shri Palkhiwala as well as by Shri Sen appearing on behalf of the respondents. Shri Palkhiwala appearing for the respondents submitted before us the historical background of the setting up of Renusagar Power Plant. It was urged that for producing aluminium by Hindalco, electricity is a raw-material.. The Hindalco was set up with a capacity of 20,000 tons per annum on the basis of sole assurance according to the respondent, given by the State of U.P. that adequate power would be given at a very cheap and economical rate. The Government of U.P. in 1959 agreed to give 55 m.w. Of power @1.99 paise per unit. This, according to the respondents, was in accordance with the policy of Central (Government and on the basis of the report of the various Committees set up by the Government. Our attention was drawn to certain facts appearing in Vol. A pages 8-9 which set out the averments made in the writ petition filed in the instant case. It was stated therein that aluminium is an essential raw material in a large number of industries of strategic national importance and its production is of vital public interest. 60% of the production of Renusagar goes to the electric industries and an extra 16% of the production goes to the utensils manufacturing unit and all the remaining production goes to defence, ordnance, mint, transportation and packaging industry. Aluminium is, therefore, a commodity of national importance and, as such, is mentioned in Schedule 1 of the Industries (Development and Regulation) Act, 1951 which contains only such industries which have been declared by the Parliament to be of public interest. The Union Government was anxious to set up new units in private sector as for want of sufficient foreign exchange such units could not be set up in the public sector. In this connection reliance was placed on the report of the Industrial Licensing Enquiry Committee known as 'Data Committee'. In this background Shri G.D. Birla who eventually floated the Corporation was prevailed upon to explore the possibility of setting up of aluminium plant. The Government of India appointed a Committee of Experts headed by Shri Nagarajarao in the year 1956 for recommending the location of a new Aluminium Plant.

In that report Shri Nagarajarao recommended Rihand as one of the places for setting up the Aluminium Plant. The U.P. Government was also keen to have the industry located in the State and persuaded Shri G.D. Birla to set up the plant with the assurance that sufficient electricity at constant and concessional rate would be available. Here, it was reiterated that the agreement dated 29th October, 1959 was entered into called the parallel agreement so that at any time any one of the Thermal Power Stations could be maintained independently.

Hindalco was allowed to expand its aluminium production capacity from time to time on the condition that it would instal its own power plant subject to the further condition that this power plant could be taken over by the State at a later date. To avoid take-over complications Hindalco decided to set up captive power house through the instrumentality of Renusagar Power Co., a 100% subsidiary of Hindalco fully controlled by Hindalco in all respects to supply power to Hindalco only. Reference may be made to page 28 of Vol. XVI which is a letter dated 13th February, 1963 written by the Deputy Secretary, Govt. Of India, Ministry of Commerce & Industry, to Shri D.P. Mandelia of Hindustan Aluminium Corporation, New Delhi, where on the question of power plant it was suggested that as stated by Shri Mandelia a separate Company may be formed with the power plant project and the major portion of the capital subscribed by Hindalco. It was highlighted that setting up of a power plant project was part of the scheme for meeting the needs of Hindalco for electricity.

All planning, designing, engineering, purchase of equipments financing was done by Hindalco exclusively for Renusagar. See Vol. XVI Pages 20, 33, 49, 58 & 62 of the paper-book.

The only object and purpose of power plant was to supply power and suit the requirements of Hindalco. Reference may be made to pages 36 & 37 of Vol. XVI of the Paper Book. According to Shri Palkhiwala and Shri B. Sen from the aforesaid background the following facts emerge:

(a) 1967/1968 Unit 1 & 2 of Renusagar went into operation.

(b) Renuagar was set up as part and parcel of Aluminium Expansion Scheme.

(c) All steps to set up Renusagar including expansion were taken by Hindalco.

(d) Agency of Renusagar was set up by Hindalco because of Take over option by the State.

(e) Renusagar is 100% subsidiary of Hindalco.

(f) Borrowings of Renusagar arranged and guaranteed by Hindalco.

(g) Renusagar supplies power to Hindalco only.

(h) There is only one transmission line from Renusagar to Hindalco.

(i) Renusagar generates power only to the extent required by Hindalco.

(j) Hindalco has complete control over Renusagar. Hindalco has undertaken various obligations for the running of Renusagar.

(k) The agreement between Renusagar and Hindalco is not a normal sale purchase agreement. This agreement shows complete control of Hindalco over Renusagar.

THE CONDITIONS UNDER THE INDIAN ELECTRICITY ACT, 1910 APPLICABLE To NORMAL SANCTION HOLDERS AND LICENSEES WERE NOT APPLIED To RENUSAGAR BECAUSE IT WAS HINDALCO'S CAPTIVE SOURCE OF GENERATION. For Instance:

(a) After the incorporation in 1964 Renusagar was granted sanction u/s 28 of the Electricity Supply Act, 1910 to supply power to Hindalco only. See Vol. XVI page 64 of the Paper Book.

(b) Since Renusagar was not public utility but a captive plant of Hindalco certain conditions applicable to normal sanction holders in the nature of public utilities but inapplicable to Renusagar were deleted from the sanction. See Vol. XVI page 74 of the Paper Book.

FOR THE PURPOSE OF EXPANSION OF HINDALCO AS WELL AS RENUSAGAR THE GOVT. OF INDIA AND THE STATE OF U.P. SPECIFICALLY PROCEEDED ON THE FOOTING THAT HlNDALCO HAD ITS "OWN SOURCE OF GENERATION" IN RENUSAGAR, SINCE RENUSAGAR WAS THE CAPTIVE POWER PLANT OF HINDALCO.

(a) Hence, for all practical purposes Renusagar was treated as part and parcel of the Hindalco's expansion programme. In 1962 Hindalco decided to expand capacity to 60,000 tons per annum. This meant need of extra power. The U.P. Government and the UPSEB expressed inability to give the extra power. The U.P. Govt. had no objection if Hindalco set up its own power-house with an option to the U.P. Govt. to take over the power plant later. On this important basis Hindalco was granted permission to set up captive power plant. Reliance was placed in this connection on Vol. XVI, pages 4, 6, 7, 15 and 16 of the Paper Book. Also see sections 34, 36, 37, & 44 of the Electricity Supply Act, 1910.

(b) Thus Hindalco was allowed to expand its aluminium production on the condition of its setting up its own power plant which was part and parcel of the expansion scheme. See in this connection Vol. XVI, pages 22 & 25 of the Paper Book.

(c) When Hindalco decided to expand its aluminium plant again from 60,000 to 1,20,000 tons per annum, the expansion of the powerhouse was a condition precedent to aluminium expansion. All negotiations, requests for permission, correspondence with authorities, intimation from Government were done and received by Hindalco. In this connection reference may be made to Vol. XVI, pages 129 to 134, 15 1, 157 & 180 of the Paper Book.

(d) Renusagar was allowed expansion limited to power requirement of Hindalco for captive use of Hindalco. See Vol. XVI, pages 145, 159, 161, 185, 187 and 189 of the Paper Book.

(e) All Government authorities including Central Govt., State of U.P. and U.P. State Electricity Board have always treated Renusagar to be "Captive Plant" as either "Self Generation" or "own generation" or "own Plant" or "own Source of generation" or "Generation for self-use" or "own use" etc. Of Hindalco. In this connection reference may be made to Vol. XVI, pages 81, 90-91, 112, 135A, 139-140, 146, 150, 152, 160, 163, 167, 169, 172, 183A & 184 of the Paper Book. It further appears that 100% power-cuts-stoppage of electricity from the State grid-were imposed on those who had 50% or more of their "own source of generation". Hindalco suffered 100% power cuts precisely on this account. It was submitted on behalf of the respondents and in our opinion rightly that the words "own source of generation" could not have one meaning for power cuts and another meaning for concession/exemptions under the same law.

It further appears that the Secretary, Power, U.P. Govt. submitted a note to the Advisory Council for recommending 100% powercuts on Hindalco as Hindalco had more than 50% power supply from its own source of generation i.e. Renusagar. See Vol. XVI, page 163 of the Paper Book.

Notification under section 22B of the Act as appearing in Vol. XIII of the Paper Book was accordingly issued.

The U.P.S.E.B. served notice on Hindalco to reduce drawal to zero. See Vol. XVI, page 167 of the Paper Book.

The U.P. Government refused exemption from power-cut to Hindalco on the ground that it had its own source of generation. See Vol. XVI, page 172.

In Court proceedings Hindalco challenged power-cut. The Government filed affidavits, always asserting Renusagar to be "own source of generation" of Hindalco. See Vol. XXIV, pages 68 to 75 of the Paper Book.

Indeed, it appears from the observations of this Court in State of U.P. v. Hindustan Aluminium Corpn. Ltd., [1979] 3 SCR 709 that this Court proceeded on the basis that Renusagar had its own source of generation.

It is further said that the appellants have also admitted in the present proceedings the position that Hindalco had in Renusagar its own source of generation. Reliance has been placed on:

> (a) Section 9 of the Duty Act as it existed upto 1970. See Vol. XVIII, page 5 of the Paper Book.
>
> (b) Three men Committee Report on exemption treated Renusagar as own generation. See Vol. A page 158 at 163 of the Paper Book.

(c) The Government of U.P. rejected exemption application. Vol. A page 3 of the Paper Book.

(d) Counter-affidavit in the first petition. Vol. X, pages 26, 27 & 32 of the Paper Book.

(e) Counter-affidavit in second petition. Vol. XI, pages 93 & 130 of the Paper Book.

(f) See the Judgment of the Allahabad High Court. Vol. A, pages 7, 10-11, 13 & 19.

(g) Petition of the U.P. Government under Article 138. Vol. XI page 134.

(h) It is also significant to note the special leave petition filed by the U.P. Government. Reference may be made to Vol. XI, pages 139 to 141.

(i) Reference may be made to Rajagopalan Report, Vol. A pages 237 & 265 of the Paper Book.

(j) See the affidavit of State of U.P. in Allahabad High Court in present proceedings. Vol. A, pages 71-72, 76 & 84.

(k) The High Court's Judgment dated 26.9.84 in the present proceedings. Vol. B, pages 391-397.

All these factors have to be borne in mind in considering whether Renusagar was Hindalco's own source of generation. Counsel for the respondents drew our attention to the fact that in the manufacture of aluminium, electrical energy is raw-material and between 16,000 to 20,000 units of energy are required for the production of 1 ton of aluminium. The impact of the imposition of duty on energy @1 paise per unit would be an increase in the cost of production of aluminium by Rs.160 to Rs.200 per ton. The impact of the imposition of duty on energy @ 6 paise per unit will be an increase in the cost of aluminium by Rs.960 to Rs.1,200 per tan.

Hindalco was incorporated in 1959 and its aluminium plant commenced production in 1962 with a capacity of 20,000 tons of aluminium ingots p.a. Hindalco obtained electrical energy required for the manufacture of aluminium to the extent of 55 MW from the State/ Board Hydle power under an agreement dated 29.10.59 @1.997717 paise per unit inclusive of all charges, duties and taxes of whatever nature on electricity. Hindalco's plant was located at Renukut because of their assurances for power supply at economical rates.

The first expansion of Hindalco from 20,000 to 60,000 tons p.a. required further electricity. According to the respondent the basic planning of the power plant at Renusagar, the arrangement for its design, engineering, purchase and for importing the plant and for financing the whole project were done by Hindalco.

Renusagar, which is a 100% subsidiary of Hindalco, wholly owned and controlled by Hindalco, was incorporated in March 1964. Hindalco established the power plant through the agency of Renusagar in order to avoid complications in the case of a take over of the power plant by the State/Board of which there could be a possibility as power generation is generally not permitted in normal conditions in private sector In this background what was highlighted on behalf of the respondent was that the sanction under section 28 of the 1910 Act given to Renusagar and its amendment established that Renusagar was not a normal type of sanction under section 23 of the 1910 Act as the holder could supply power only to Hindalco.

The first generating unit in Renusagar commenced on 9.9.67 and the second one commenced on 5.10..68. All steps for the expansion of the power in Renusagar so as to match the power requirement of Hindalco's expansion were taken by Hindalco even though Renusagar had been incorporated. Applications for all the necessary sanctions and permissions were made by Hindalco.

Permissions and sanctions were first intimated to Hindalco even though Renusagar was in existence. See Vol. XVI, pages 129-134 & 149 of the Paper Book. Changes in the sanctions and/or permissions granted were obtained by Hindalco and not by Renusagar. See Vol. XVI, pages 157, 180 of the Paper Book. The expansion of the power plant in Renusagar was to exactly match the requirements of Hindalco for the production of aluminium. The expansion of the power plant in Renusagar was part and parcel of the expansion of the aluminium plant of Hindalco. See Vol. XVI, pages 145, 159, 161, 185, 187 & 189 of the Paper Book.

The third generation unit in Renusagar commenced in November 1981 and the fourth generating unit in April 1983. Hindalco consumes about 255 MW power out of which 250 MW comes from Renusagar and 5 MW by way of main supply and 15 MW by way of emergency supply is made by the Board.

It was emphasised on behalf of Hindalco that the power plants at Renusagar were set up as part and parcel of the aluminium expansion scheme of Hindalco and the only object and purpose of the power plants in Renusagar was to supply power to suit the needs of Hindalco.

All steps to set up the power plant in Renusagar and its further expansion were taken by Hindalco. The power plant was set up by Hindalco through the agency of Renusagar (100% subsidiary and wholly owned and controlled by Hindalco) to avoid complications in the event of take over by the State/Board.

All the borrowings of Renusagar were arranged and guaranteed by Hindalco. Further, there is only one transmission line going out of Renusagar and the same goes to Hindalco. Renusagar can supply power only to Hindalco. Renusagar generates power only to the extent required by Hindalco. Hindalco has complete control over Renusagar including its day-to-day operations. This will be evident from the applications with regard to running of Renusagar Power Plant Station undertaken by Hindalco to the Board. See Vol. XV, pages 104, 118, 124 of the Paper Book.

The agreement between Renusagar and Hindalco indicates this was not a normal sale-purchase agreement between two independent persons at arms length. The price of electricity is determined according to the cash needs of Renusagar. This covenant also shows complete control of Hindalco over Renusagar.

It was submitted before us that if looked at properly, Renusagar was Hindalco's own source of generation and according to the respondent an analysis of the different provisions of the Amendment Act, makes the position clear. Submissions were made on the construction of section 3 of the Act and also that the difference in language of section 2(g)(c) and old section 9 is significant. Ambit of section 3(1)(c) is wider than the old section in view of the addition of the words 'source of generation' which must be given their full meaning. We have set-out hereinbefore the provisions of sections 3(1)(c) and 9 of the Act. Rule 2(g) referred to in the order shows that the expression 'any person' in section 3(1)(c) would mean a person other than licensee or a Board who consumes energy from his own source of generation. Hindalco fixes in the expression 'any other person' under section 3(1)(c) and it consumes energy from its own source of generation. Generation being done by Renusagar, it was pointed out that Rule 2(g) of the U.P. Electricity Duty Rules, 1952 supports this plea of the respondents. It should be borne in mind that the expression 'own source of generation' which has not been defined in the Duty Act or 1910 Act, cannot be regarded as a term of art.

The various documents and letters placed before the Court and referred to hereinbefore indicate that all persons and authorities dealing and conversant with this matter had consistently treated Renusagar as own source of generation of Hindalco. In the power-cuts matter under section 22B of 1910 Act, 100% cut was imposed on Hindalco on the footing that it has its own source of generation. All the authorities including the State and the Board have all along treated Renusagar as own source of generation of Hindalco. The High Court as well as this Court had proceeded on that basis. In a note with the Advisory Counsel dated 31.5.77 the Secretary, Power Deptt. Of the State Govt. treated Renusagar as own source of generation of Hindalco.

In the proceedings under the Electricity Duty Act itself, it was the case of the State that Renusagar generation was by Hindalco for its own use within the meaning of section 9 of the Duty Act. It was also the case of the State that Renusagar was own source of generation of Hindalco and since by its amendment in 1952 the Legislature had shown an intention to levy duty on own source of generation, Hindalco was not entitled to exemption. It was, therefore, submitted that Renusagar must be regarded as alter ego of Hindalco i.e., own source of generation of Hindalco within the meaning of section 3(1)(c) of the Duty Act.

The word "own" is a generic term, embracing within itself several gradations of title, dependent on the circumstances, and it does not necessarily mean ownership in fee simple; it means, "to possess to have or hold as property". See Black's Law Dictionary, 5th Edn. p. 996. It was further submitted that by the 1970 Amendment Act, the Legislature intended to cover a wide area under section 3(1)(c) than under the old section 9. If Renusagar is the own source of generation of Hindalco then the consumption clearly falls within section 3(1)(c). The three clauses of section 3(1), it was submitted, had to be read together by way of harmonious construction. Section 3(1)(a) should not be so construed as to defeat the aim of section 3(1)(c). In the case of harmonious construction what needs

to be looked at, is the dominant or the primary element in the provisions. Thus section 3(1)(c) should not be interpreted to cover all the cases of own generation notwithstanding the fact that a sale may be involved and to that extent the transaction should be excluded from the operation of section 3(1)(a). Alternatively, it was submitted that if the three clauses were to be treated as independent of each other then the result of construction that each provision would yield to special provisions applied should be applied as a part and parcel of harmonious construction of this section.

In this approach clause (c) of section 3(1) ought to be regarded as dealing with the special situation, namely, a person consuming from its own source of generation while provisions of clause (a) of section 3(1) should be regarded as general provisions dealing with the cases of sale and consumption generally. The aforesaid construction would be in harmony, it was urged, with the object and purpose of the legislation. Reliance was placed on the observations of this Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. & Ors., [1961] 3 SCR 185, where at page 193 this Court insisted on harmonious construction and not on literal construction. Also see M/s Girdhari Lal & Sons v. Balbir Nath Mathur & Ors., [1986] 2 SCC 237 at 241 & 246; State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd., [1986] 3 SCC 91 at 100 and D. Sanjeevayya v. Election Tribunal, A.P. & ors., [1967] 2 SCR 489 at 492.

On behalf of the respondents and in support of their contention, it was urged that the harmonious construction would advance purpose and object of the legislation inasmuch as it was clearly one of the purposes of the legislation to treat captive generation or self-generation as a separate category and to confer benefits on the same in public interest. Our attention was drawn to the notification dated 17th March, 1973 which appears at Vol. XVIII, page 34. It was further contended on behalf of the respondents that interpretation of section 3(1)(c) of the Act would not depend on the manner in which a person might choose to organise his affairs. Further that there was no rational distinction having a nexus with the object of the Duty Act, where a person generating electrical energy himself was consuming the same and a person who engaged another person to generate electrical energy exclusively for and on behalf of his complete control and who consumes all the electrical energy so generated. Accordingly it was urged that such a distinction being arbitrary and irrational, it would be violative of Article 14 of the Constitution. Hence, it was contended that a construction of the Duty Act, which would make such a distinction, must be avoided.

This naturally brings us to the question of lifting the corporate veil or piercing the corporate veil as we often call it. On behalf of the appellants, however, it was very strongly urged that in this case there was no ground for lifting the corporate veil and Shri Trivedi, learned Additional Advocate-General, State of U.P., who was assisted by Shri Gopal Subramaniam, submitted before us elaborate arguments and made available to us all the relevant documents, urged that there was no warrant either in law or in fact to lift the corporate veil and to treat Renusagar's plant as Hindalco.s own source of generation. Shri Trivedi urged that facts in this case do not justify such a construction and the law does not warrant such an approach. We may say that Shri Trivedi mainly relied on the proposition that normally the Court has disregarded the separate legal entity of a Company only where the Company was formed or used to facilitate evasion of legal obligations. He referred us to the observations of this Court in Western Coalfields Ltd. v. Special Area Development Authority, Korba & Anr., [1982] 2 SCR 1 at 17. The facts of that case were, however, entirely different and it is

useless to refer to them but at page 17 of the report, Chandrachud, C.J. speaking for the Court quoted the observations in Andhra Pradesh State Road Transport Corpn. v. The I.T.O. & Anr., [1964] 7 SCR 17, where this Court had held that though the Transport Corporation was wholly controlled by the State Government it had a separate entity and its income was not the income of the State Government. While delivering the Judgment in that case Gajendragadkar, C.J., referred to the observations of Lord Denning in Tamlin v. Hannaford, [1950] KB 18 where Lord Denning had observed that the Crown and the corporation were different and the servants of the corporation were not civil servants.

Chandrachud, C.J., relied on the aforesaid observations and referred to Pennington's Company Law 4th Edn., pages 50- 51, where it was stated that there were only two cases where the Court had disregarded the separate legal entity of a Company and that was done because the company was formed or used to facilitate the evasion of legal obligations.

The learned editor of Pennington's Company Law, 5th Edn., at page 49 has recognised that this principle has been relaxed in subsequent cases. He states that the principle of company's separate legal entity has on the whole been fully applied by the Courts since Salomon's case. Corporate veil has been lifted where the principal question before the court was one of company law, and in some situations where the corporate personality of the company involved was really of secondary importance and the application of the old principle has worked hardship and injustice. In England, there have been only a few cases where the court had disregarded the company's corporate entity and paid attention to where the real control and beneficial ownership of the company's undertaking lay. When it had done this, the court had relied either on a principle of public policy, or on the principle that devices used to perpetrate frauds or evade obligations will be treated as nullities, or on a presumption of agency or trusteeship which at first sight Salomon's case seems to prohibit. Again at page 36 of the same Book, the learned author notes a few cases where the courts have disregarded separate legal entity of a company and investigated the personal qualities of the shareholders or the persons in control of it because there were overriding. public interests to be served by doing so.

Indubitably, in this case there was no question of evasion of taxes but the manner of treatment of the power plant of Renusagar as the power plant of Hindalco and the Government taking full advantage of the same in the case of power cuts and denial of supply of 100% power to Hindalco, in our opinion, underline the facts and, as such, imply acceptance and waiver of the position that Renusagar was a power plant owned by Hindalco. Shri Trivedi natually relied on several decisions which we shall briefly note in aid of the submission that Renusagar's power plant could not be treated as Hindalco's power plant. He referred us to the well-known case of Aron Salomon v. A. Salomon & Co. Ltd., [1897] AC 22 at 27, 30-31, 43. 56 to emphasise the distinction between the shareholders and the company. This point of view was emphasised by this Court also in which Chandrachud, CJ., relied on Western Coalfields Ltd. in Rustom Cavasjee Cooper v. Union of India, [1970] 3 SCR 530 at 555, where this Court held that a Company registered under the Companies Act was a legal person, separate and distinct from its individual members. Property of the Company was not the property of the shareholders. These propositions, in our opinion, do not have any application to the facts of the instant case. Shri Trivedi also drew out attention to the Bank Voor Handel En Scheepvaart N. V. v. Stalford, [1953] 1 QB 248, where in the context of the international

law property belonging to or held on behalf of a Hungarian national came up for consideration and the distinction between a shareholder and a company was emphasised and highlighted.

In Kodak Ltd. v. Clark, [1903] 1 KB 505, the Court of Appeal in England while dealing with an English company carrying on business in the U.K. Owned 98% of the shares in a foreign company, which gave it a preponderating influence in the control, election of directors etc., of the foreign company. The remaining shares in the foreign company were, however, held by independent persons, and there was no evidence that the English company had ever attempted to control or interfere with the management of. the foreign company, or had any power to do so otherwise than by voting as shareholders. It was held that the foreign company was not carried on by the English company, nor was it the agent of the English company, and that the English company was not, therefore, assessable to income tax. Renusagar was not the alter ego of Hindalco, it was submitted. On the other hand these English cases have often pierced the veil to serve the real aim of the parties and for public purposes. See in this connection the observations of the Court of Appeal in DHN Food Distributors Ltd. & Ors., v. London Borough of Tower Hamlets, [1976] 3 AER 462. It is not necessary to take into account the facts of that case. We may, however, note that in that case the corporate veil was lifted to confer benefit upon a group of companies under the provisions of the Land Compensation Act, 1961 of England. Lord Denning at page 467 of the report has made certain interesting observations which are worth repeating in the context of the instant case. The Master of the Rolls said at page 467 as follows:

> "Third, lifting the corporate veil. A further very interesting point was raised by counsel for the claimants on company law. We all know that in many respects a group of companies is treated together for the purpose of general accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says: 'there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group'. This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries. These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in Harold Holdworth & Co. (Wakefield) Ltd v. Caddies. So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance. The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly. It was not necessary for them to go through a conveyancing device to get it.
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> I realise that the President of the Lands Tribunal, in view of previous cases, felt it necessary to decide as he did. But now that the matter has been fully discussed in this court, we must decide differently from him. These companies as a group are entitled to compensation not only for the value of the land, but also compensation for

disturbance. I would allow the appeal accordingly."

Lord Justice Goff proceeded with caution and observed as follows at pages 468 & 469 of the report:

> Secondly, on the footing that that is not in itself sufficient, still, in my judgment, this is a case in which one is entitled to look at the realities of the situation and to pierce the corporate veil. I wish to safeguard myself by saying that so far as this ground is concerned, I am relying on the facts of this particular case. I would not at this juncture accept that in every case where one has a group of companies one is entitled to pierce the veil, but in this case the two subsidiaries were both wholly owned; further, they had no separate business operations whatsoever; thirdly, in my judgment, the nature of the question involved is highly relevant, namely whether the owners of this business have been disturbed in their possession and enjoyment of it. I find support for this view in a number of cases, from which I would make a few brief citations, first from Harold Holdworth & Co (Wakefield) Ltd: v. Caddies where Lord Reid said:
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> 'It was argued that the subsidiary companies were separate legal entities, each under the control of its own board of directors, that in law the board of the appellant company could not assign any duties to anyone in relation to the management of the subsidiary companies, and that, there-
>
> fore, the agreement cannot be construed as entitling them to assign any such duties to the respondent. My Lords, in my judgment, this is too technical an argument. This is an agreement in re mercatoria, and it must be construed in the light of the facts and realities of the situation. The appellant company owned the whole share capital of British Textile Mfg. Co. and, under the agreement of 1947, the directors of this company were to be the nominees of the appellant company. So, in fact, the appellant company could control the internal management of their subsidiary companies, and, in the unlikely event of there being any difficulty, it was only necessary to go through formal procedure in order to make the decision of the appellant company's board fully effective.
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> That particular passage is, I think, especially cogent having regard to the fact that counsel for the local authority was constrained to admit that in this case, if they had thought of it soon enough, DHN could, as it were, by moving the pieces on their chess board, have put themselves in a position in which the question would have been wholly unarguable.
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> l also refer to Scottish Co-operative Wholesale society Ltd. v. Meyer. That was a case under s. 210 of the Companies Act, 1948 and Viscount Simonds said:
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> 'I do not think that my own views could be stated better than in the late Lord President Cooper's words on the first hearing of this case. He said: "In my view, the

section warrants the court in looking at the business realities of a situation and does not confine them to a narrow 1egalistic view."

My third citation is from the judgment of Danckwerts LJ in Merchandise Transport Ltd. v. British Transport Commission where he said that the cases-

'Show that where the character of a company, or the nature of the persons who control it, is a relevant feature the court will go behind the mere status of the company as a legal entity, and will consider who are the persons as share sholders or even as agents who direct and control the activities of a company which is incapable of doing anything without human assistance.' The third ground, which I place last because it is longest, but perhaps ought to come first, is that in my judgment, in truth, DHN were the equitable owners of the property. In order to resolve this matter, it will be necessary for me to refer in some detail to the facts."

Shaw L.J. also observed at page 473 as follows:

"Even if this were not right, there is the further argument advanced on behalf of the claimants that there was so complete an identity of the different companies comprised in the so- called group that they ought to be regared for this purpose as a single entity. The completeness of that identity manifested itself in various ways. The directors of DHN were the same as the directors of Bronze; the shareholders of Bronze were the same as in DHN. the parent company, and they had a common interest in maintaining on the property concerned the business of the group. If anything were necessary to reinforce the complete identity of commercial interest and personality, cl. 6, to which I have referred already, demonstrates it, for DHN undertook the obligation to procure their subsidiary company to make the payment which the bank required to be made.

If each member of the group is regarded as a company in isolation, nobody at all could have claimed compensation in a case which plainly calls for it. Bronze would have had the land but no business to disturb; DHN would have had the business but no interest in the land."

In this connection it would be useful to refer to Harold Holdsworth & Co. (Wakefield), Ltd. v. Caddies, [1955] 1 All E.R. 725, where Lord Morton of Henryton in England, at page 734 of the report observed as follows:

"My Lords, this clause refers to a group of companies consisting of the appellant company and their existing subsidiary companies. I cannot read the clause as compelling the board to assign duties to the respondent in relation to the business of every company in the group. Nor can I read it as compelling the board to assign him duties in relation to the business of the appellant company. That business is not treated as being on a different footing from the business of British Textile or of

> another subsidiary of the appellant company, Whalley & Appleyard, Ltd., which is mentioned in the respondent's condescendence 3. As I read the clause, it leaves the board of the appellant company free to assign to the respondent duties in relation to the business of one only, or two only or all of the companies in the group, and to vary the assignment and the duties from time to time. Further, I think the clause leaves the board free to appoint another person to be "a managing director", and to divide the duties and powers referred to in the clause between the respondent and the other managing director in such manner as they think fit. It is true that each company in the group is, in law, a separate entity, the business whereof is to be carried on by its own directors and managing director, if any; but there is no doubt that the appellant company, by taking any necessary formal steps, could make any arrangements they pleased in regard to the management of the business of (for instance) British Textile. They owned all the issued capital and the directors were their nominees."

Lord Reid at pages 737-738 observed as follows:

> "It was argued that the subsidiary companies were separate legal entities, each under the control of its own board of directors, that in law the board of the appellant company could not assign any duties to any one in relation to the management of the subsidiary companies, and that, therefore, the agreement cannot be construed as entitling them to assign any such duties to the respondent.
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> My Lords, in my judgment, this is too technical an argument. This is an agreement in re mercatoria, and it must be construed in the light of the facts and realities of the situation. The appellant company owned the whole share capital of British Textile Manufacturing Co., and, under the agreement of 1947, the directors of this company were to be the nominees of the appellant company. So, in fact, the appellant company could control the internal management of their subsidiary companies, and, in the unlikely event of there being any difficulty, it was only necessary to go through formal procedure in order to make the decision of the appellant company's board fully effective."

our attention was drawn by Shri Sen to Scottish Co-

operative Wholesale Society Ltd. v. Meyer and Anr., [1958] 3 All E.R. 66, where Viscount Simonds of House of Lords observed at pages 71-72 as follows:

> "My Lords, it may be that the acts of the society of which complaint is made could not be regarded as conduct of the affairs of the company if the society and the company were bodies wholly independent of each other, competitors in the rayon market, and using against each other such methods of trade warfare as custom permitted. But this is to pursue a false analogy. It is not possible to separate the transactions of the society from those of the company. Every step taken by the latter was determined by the policy of the former. I will give an example of this. I observed that, in the course

of the argument before the House, it was suggested that the company had only itself to blame if, through its neglect to get a contract with the society, it failed in a crisis to obtain from the Falkland Mill the supply of cloth that is needed. The short answer is that it was the policy of the society that the affairs of the company should be so conducted, and the minority shareholders were con tent that it should be so. They relied-how unwisely the event proved-on the good faith of the society, and in any case they were impotent to impose their own views. It is just because the society could not only use the ordinary and legitimate weapons on commercial warfare but could also control from within the operations of the company that it is illegitimate to regard the conduct of the company's affairs as a matter for which it had no responsibility. After much consideration of this question, I do not think that my own views could be stated better than in the late Lord President, Lord Cooper's words on the first hearing of this case . He said (1954 SC at p.391);

"In my view, the section warrants the court in looking at the business realities of a situation and does not confine them to a narrow legalistic view. The truth is tnat, whenever a subsidiary is formed as in this case with an independent minority of shareholders, the parent company must, if it is engaged in the same class of business, accept as a result of having formed such a subsidiary an obligation so to conduct what are in a sense its own affairs as to deal fairly with its subsidiary."

At the opposite pole to this standard may be put the conduct of a parent company which says "our subsidiary company has served its purpose, which is our purpose. Therefore let it die" and, having thus pronounced sentence, is able to enforce it and does enforce it not only by attack from without but also by support from within. If this section is inept to cover such a case, it will be a dead letter indeed. I have expressed myself strongly in this case because it appears to me to be a glaring example of precisely the evil which Parliament intended to remedy."

Similarly, at page 84 of the report, Lord Keith's observations are also relevant to the facts of this case.

"My Lords, if the society could be regarded as an organisation independent of the company and in competition with it, no legal objection could be taken to the actions and policy of the society. Lord Carmont pointed this out in the Court of Session. But that is not the position. In law, the society and the company were, it is true, separate legal entities. But they were in the relation of parent and subsidiary companies, the company being formed to run a business for the society which the society could not at the outset have done for itself unless it could have persuaded the respondents to become servants of the society. This the respondents were not prepared to do. The company, through the knowledge, the experience, the connexions, the business ability and the energies of the respondents, had built up a valuable goodwill in which the society shared and which there is no reason to think would not have been maintained, if not increased, with the co- operation of the society. The company was

in substance, though not in law, a partnership consisting of the society and the respondents. Whatever may be the other different legal consequences following on one or other of these forms of combination one result, in my opinion, followed in the present case from the method adopted, which is common to partnership, that there should be the utmost good faith between the constitutent members. In partnership the position is clear. As stated in Lindley on Partnership (11th Edn.) p.401:

"A partner cannot, without the consent of his co- partners, lawfully carry on for his own benefit, either openly or secretly,. any business in rivalry with the firm to which he belongs. " It may not be possible for the legal remedies that would follow in the case of a partnership to follow here, but the principle has, I think, valuable application to the circumstances of this case."

In Charterbridge Corpn. Ltd. v. Lloyds Bank Ltd. & Anr.

[1969] 2 All E.R. 1185 at page 1194 Justice Pennycuick emphasised that the reality of the situation must be looked in.

Shri Trivedi drew out attention to the decision in Marshall Richards Machine Co. Ltd. v. Jewitt (H.M. Inspector of Taxes) 36 TC 511, where at page 525 of the report Lord Upjohn, J. Observed that where you have a wholly-owned subsidiary, and both the parent company and wholly-owned subsidiary enter into trading relationships, there is, of course, a dual relation, but you cannot for the purposes of tax disregard the fact that there are, in fact, two entities and two trades, that is to say, the trade of each company. It is normally a question of fact whether the disbursement in question is laid out wholly and exclusively and for the purposes of the trade. In aid of this proposition and in furtherance Shri Trivedi drew our attention to the profits of the two companies which were separately computed and also referred to Vol. C, 641 where the profits of Renusagar were separately indicated and Vol. at page 642 where the profits of Hindalco were separately indicated.

We are, however, of the opinion that these tests are not concIusive tests by themselves. Our attention was also drawn to the decision of the Madras High Court in M/s. Spencer & Co. Ltd., Madras v. The Commissioner of Wealth Tax, AIR 1969 Madras 359, where Veeraswami J. held that merely because a company purchases almost the entirety of the shares in another company, there was no extinction of corporate character for each company was a separate juristic entity for tax purposes. Almost on similar facts, are the observations of P.B. Mukharji, J. in Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd., AIR 1969 Cal. 238 where he held that holding company and subsidiaries are incorporated companies and in this context each has a separate legal entity. Each has a separate corporate veil but that does not mean that holding company and the subsidiary company within it, all constitute one company.

Mr Justice o. Chinnappa Reddy speaking for this Court in Life Insurance Corpn of India v. Escorts Ltd. & Ors [1985] Suppl 3 SCR 909 had emphasized that the corporate veil should be lifted where the associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is

permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected. After referring to several English and Indian cases, this Court observed that eversince A. Salomon & Co. Ltd's case (supra), a company has a legal independent existence distinct from individual members. It has since been held that the corporate veil may be lifted and corporate personality may be looked in. Reference was made to Pennington and Palmer's Company Laws.

It is hightime to reiterate that in the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly-owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order of the profits of Renusagar have been treated as the profits of Hindalco.

In the aforesaid view of the matter we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall under section 3(1)(c) of the Act. The learned Additional Advocate-General for the State relied on several decisions, some of which have been noted.

The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon's case still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence. (Tagore Law Lecture 183).

It appears to us, however, that as mentioned the concept of lifting the corporate veil is a changing concept and is of expanding horizons. We think that the appellant was in error in not treating Renusagar's power plant as the power plant of Hindalco and not treating it as the own source of energy. The respondent is liable to duty on the same and on that footing alone; this is evident in view of the principles enunciated and the doctrine now established by way of decision of this Court in Life Insurance Corpn of India, (supra) that in the facts of this case sections 3(1)(c) and 4(1)(c) of the Act are to be interpreted accordingly. The person generating and consuming energy were the

same and the corporate veil should be lifted. In the facts of this case Hindalco and Renusagar were inextricably linked up together. Renusagar had in reality no separate and independent existence apart from and independent of Hindalco.

In the aforesaid view of the matter we are of the opinion that consumption of energy by Hindalco is clearly consumption by Hindalco from its own source of generation. Therefore, the rates of duty applicable to own source of generation have to be applied to such consumption, that is to say. I paisa per unit for the first two generating sets and nil rate in respect of 3rd and 4th generating sets. It is appropriate to refer that having regard to the conduct of the State the power-cuts matter and also the present proceedings the State should not be permitted to treat consumption of Renusagar's energy by Hindalco as anything other than different from consumption of energy by Hindalco from its own source of generation. We are, therefore, of the opinion that in the facts of this case the corporate veil must be lifted and Hindalco and Renusagar should be treated as one concern and if that is taken the consumption of energy by Hindalco must be regarded as consumption by Hindalco from its own source of generation.

Inasmuch as the High Court upheld this contention of the respondent we are in respectful agreement of its views and the appeal directed against this finding of the High Court must, therefore, be rejected.

The electricity bill for arrears, subject to consideration of other aspects of the matter, that is to say, the validity of the order of rejection passed by the State on 16th February, 1982 rejecting the claim for exemption would be treated hereinafter.

In order to appreciate the second aspect of the matter, that is to say, the challenge to the order which has been quashed by the High Court, it is necessary to recapitulate certain facts. Hindalco made an application to the State Government under section 3(4) of the Act for exemption on 28th September, 1970. In spite of repeated requests made by Hindalco the State did not take any decision on the said application of Hindalco and also purported to raise and enforce demands under the Duty Act against Hindalco. Hindalco and Renusagar filed a Writ Petition No. 368 of 1972 in the High Court of Allahabad on 21st March, 1972. On that very date Hindalco was informed that the application previously made by it had been rejected by the State Government. Hindalco applied for amendment of the writ petition. Reasons for rejection were intimated on 16th June, 1972. Thereafter Writ Petition No. 368 of 1972 was withdrawn. On 21st July, 1972 Hindalco and Renusagar filed another Writ Petition No. 4521 of 1972 in the High Court of Allahabad challenging the order of rejection. On 17th May, 1974 the High Court delivered judgment quashing the aforesaid rejection and asking the State Government to consider the matter afresh in accordance with law and in accordance with the directions contained in the said judgment. Another Writ Petition being Writ Petition No. 3921 of 1982 out of which the present appeal arises was filed by Renusagar and Hindalco on 16th April, 1982. The High Court passed an order on 26th September, 1984 quashing the order. The High Court was of the view that the Government was under a mandatory duty to consider certain factors. These were: (1) How did the cost of power to the Corporation compare with the cost of power to similar industries in other States? (2) How the spending of huge sums A by the Government of India in foreign exchange decreased and its keenness to attain self-sufficiency in the

country by increasing its indigenous production in public interest attained? (3) The commitment made by the Government of Uttar Pradesh to the Hindalco to supply power at cheap rate as noticed in the report of Dr. Nagarajarao. (4) The effect of imposition of duty on the margin of profit available to Hindalco.

The provisions of sub-section (4) of section 3 have been noticed. As we have read the said provisions, it appears to us that the dominance of public interest is significant and we refer to the various factors, namely, (a) prevailing charges for supply of energy in any area, (b) the generating capacity of any plant, (c) the need to promote industrial production generally or any specified class therof and other relevant factors and then taking all these factors into consideration, in public interest, to fix different rates of electricity duty in relation to different classes of consumption of energy or allow any exemption from payment thereof. Various grounds have been made out.

Shri Sen for the respondents is right that in view of the ceilings prescribed the power conferred upon the State under section 3(1) of the Act by itself is valid and does not amount to excessive delegation. See also in this connection the observations of this Court in Devi Das Gopal Krishnan & Ors. v. State of Punjab & Ors., [1967] 3 S.C.R. 557 and Ram Bachan Lal v. The State of Bihar, [1967] 3 S.C.R. 1.

Shri Trivedi, learned Additional Advocate-General, State of Uttar Pradesh drew our attention to the case of Panama Canal Company v. Grace Line, 356 U.S. 309 2 Lawyers' Edn. 788, where at page 793 of the report while dealing with the facts of that case Justice Douglas observed that, as it was seen in that case, the conflict raged over questions that at heart involved problems of statutory construction and cost accounting: whether an operating deficit in the auxiliary or supporting activities was a legitimate cost in maintaining and operating the Canal for purpose of the toll formula. These are matters on which experts might disagree; these involve nice issues of judgment and choice, which required the exercise of informed discretion. In those circumstances Justice Douglas observed that the case was, therefore, quite unlike the situation where a statute created a duty to act and an equity court was asked to compel the agency to take the prescribed action. What was emphasised was that the matter should be far less cloudy, much more clear for courts to intrude. It is also in this connec-

tion necessary that if technical considerations are involved the Court feels shy to interfere. Reliance was placed on the observations of this Court in Vincent Panikurlangara v. Union of India and others, [1987] 2 S.C.C. 165. There the writ petition involved the claim for withdrawal of 7000 fixed dose combinations and withdrawal of licences of manufacturers engaged in manufacture of about 30 drugs which have been licensed by the Drugs Control Authorities; the issues that fell for consideration are not only relating to technical and specialised matters relating to therapeutic value, justification and harmful side effects of drugs but also involved examination of the correctness of action taken by respondents 1 and 2 therein on the basis of advice; the matter also involved the interest of manufacturers and traders of drugs as also the interest of patients who require drugs for their treatment. This Court reiterated that in view of the magnitude, complexity and technical nature of the enquiry involved in the matter as also the far-reaching implications of the total ban of certain medicines for which the petitioner had prayed, a judicial proceeding of the nature initiated was not an appropriate one for determination of such matters. The technical aspects which arose for consideration in a matter of that type could not be effectively handled by a court. This Court also

reiterated that similarly the question of policy which was involved in the matter was also one for the Union Government-keeping the best interest of citizens in view-to decide. No final say in regard to such aspects came under the purview of the court.

The High Court in the instant case reiterated the necessity of cheap electricity and if cheap electricity was not made available, the cost of indigenous aluminium would go up. It would necessitate import of aluminium causing drain on the foreign exchange of the country. On the other hand, the learned Additional Advocate General for the State of U.P. contended and in our opinion rightly that primary purpose of the Act as stated in the preamble was to raise the revenue for the development projects. Whether in a particular situation, rural electrification and development of agriculture should be given priority or electricity or development of aluminium industry should be given priority or which is in public interest, in our opinion, are value judgments and the legislature is the best judge. The High Court in its impugned judgment referred to the order of the Government. The said order read as follows:

> "The Corporation has also emphasized that the Government of India is spending a huge sum of money in foreign exchange to meet the requirements of aluminium in India, with a view to increasing the aluminium production by Hindalco Electricity should be made available at cheap rate and exemption should be granted to the Corporation from payment of electricity duty. In this connection it may again be pointed out that the imposition of electricity duty will not affect the productivity of aluminium by M/s Hindalco as electricity duty is negligible as clearly made out in the earlier paragraphs. Accordingly, the electricity duty is not likely to have any adverse effect on foreign exchange of the country.

Referring to the aforesaid observations of the State Government, the High Court was of the view that the said observations of the State Government clearly showed that the State Government did not address itself to the need of promoting aluminium industry for increasing production of aluminium which would in the long run save foreign exchange. We are unable to agree. What was paramount before introduction of the development programme and how the funds should be allocated and how far the Government considers a negligible increase and rise in the cost of aluminium for the purpose of raising monies for other development activities are matters of policy to be decided by the Government. It is true as the High Court has pointed out that the question regarding public interest and need to promote indigenous industrial production was related with the question of exemption of duty. But what the High Court missed, in our opinion with respect, was that a matter of policy which should be left to the Government. Reading the order of the Government, it appears to us that the Government had adverted itself to all the aspects of sub- section (4) of section 3 of the Act. It is true that certain amount of encouragement was given to Hindalco to start the industry in a backward area. After considerable point of time the very low rate of duty was charged. But if we need other sectors of growth and development for example, food, shelter, water, rural electrification, the need for encouragement to aluminium industry had to be subordinated by little high cost because that is a matter on which the Government as representing the will of the people is the deciding factor. Price fixation, in our opinion, which is ultimately the basis of rise in cost because of the rise of the electricity duty is not a matter fol investigation of Court. This question was examined by this Court

in Union of India and another v. Cynamide India Ltd. and another, [1987] 2 S.C.C. 720 where one of our learned brothers who delivered the judgment of the High Court of Allahabad was a party. There in exercise of the powers under section 3(2)(c) of the Essential Commodities Act. the Drugs (Prices Control) order, 1979 was made. The Central Government thereafter issued notification thereunder. At page 741 of the report, Chinnappa Reddy, J. speaking for the Court referring to a passage of the Administrative Law by Schwartz with approval expressed the view that those powers were more or less legislative in character. Fixation of electricity tariff can also to a certain extent be regarded of this category. Chinnappa Reddy, J. Observed at page 735 of the report that price fixation is more in the nature of a legislative activity than any other. He referred to the fact that due to the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is 'difficult in theory and impossible in practice'. Reddy, J. insisted that it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. It appears to us that sub-section (4) of section 3 of the Act in the set up is quasi- legislative and quasi-administrative in so far as it has power to fix different rates having regard to certain factors and in so far as it has power to grant exemption in some cases, in our opinion, is quasi-legislative in character. Such a decision must be arrived at objectively and in consonance with the principles of natural justice. It is correct that with regard to the nature of the power under section 3(4) of the Act when the power is exercised with reference to any class it would be in the nature of subordinate legislation but when the power is exercised with reference to individual it would be administrative. Reference was made in this connection to the cases of Union of India v. Cynamide India Ltd. (supra) and P.J. Irani v. State of Madras, [1962] 2 S.C.R. 169 at 179-180 and 181-182.

If the exercise of power is in the nature of subordinate legislation the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled. The High Court was right only to the limited extent that all the relevant considerations must be taken into account and the power should not be exercised on irrelevant considerations but singular consideration which the High Court, in our opinion, seems to have missed in the judgment under appeal, is these factors, namely, the prevailing charges for supply of energy in any area, the generating capacity of any plant, the need to promote industrial production generally or any specified class thereof and other relevant factors cannot be judged disjointly. These must be judged in adjunct to the public interest and that public interest is as mentioned in the Preamble to raise revenue.

Reference was also made to the observations of the Judicial Committee in Ryots of Garabandho and others v. Zamindar of Parlakimedi and another, A.I.R. 1943 P.C. 164 where the Judicial Committee had to deal with the proviso to section 30 of the Act. It read as follows:

> "In settling rents under this section the Collector shall presume, unless the contrary is proved, that the existing rent or rate of rent is fair and equitable and shall have regard to the provisions of this Act for determining rates of rent payable by a ryot."

Viscount Simon L.C. Observed that the view taken by the majority of the Collective Board of Revenue in making the order which is now complained of, is that the requirement to "have regard to" the provisions in question has no more definite or technical meaning than that of ordinary usage, and only requires that these provisions must be taken into consideration. In their view the prime duty of the Revenue officer under Chap. II was to fix a fair and equitable rent, and though he must be guided by the principles underlying such provisions as were contained in chap. 3, he was not strictly bound by such provisions. The Judicial Committee observed at page 180 of the report as follows:

> "Having regard to the long time that had elapsed since the last tentative settlement of rent in 1867-68, to the prodigions rise in prices that had taken place since then, and to the general economic improvement of this part of the country, the Collective Board considered that an enhancement of 37-1/2 per cent, would not be oppressive and directed the Revenue officer to reduce to that figure the enhancement of 100 per cent, which he had made. This view of the effect of the direction to "have regard to" the provisions of the Act for determining rates of rent payable by a ryot is supported by the decision of the High Court in 49 Mad. 499 at 506. It is also confirmed by certain observations of Reilly J. in 63 M.L.J. 450 at p. 486, where the learned Judge said:
>
> Where the settling officer has to deal only with such questions as would arise in a suit for commutation, for enhancement, or reduction of money rent, under s. 168(2) he must be guided by the appropriate principles as set out in the Act, but there is no doubt that his settlement may embrace a much wider field of question and whenever he has not merely to adjust the lawful rent but to fix what is fair and equitable in variation from the lawful rent which can be exacted in a suit, his settlement is clearly something which no civil Court could do unless specially empowered.
>
> Their Lordships find themselves on this matter in agreement with the view taken by the majority of the Collective Board. It is not possible to peruse the proceedings of the Special Revenue officer in this case without seeing that a number of matters besides the rise in prices of staple food crops were considered by him, and had to be considered by him, if he was to carry out his duty under chap. II. He observed in para. 30 of the final proceedings dated 10th December 1935:
>
> I hold that the present settlement is also a fresh and initial settlement wherein everything has to be re-classified afresh and new rates of rent have to be fixed. It is not therefore a case of enhancement but of fixing and introducing a new rate of rent based on the principles of equity and fairnes as laid down in Chap. II, Estates Land Act."

The High Court in the impugned judgment commented that it was a mandatory duty to separately consider these relevant factors and has committed the error against which the Judicial Committee cautioned. The High Court was of the view at page 10 of the judgment that there was a mandatory duty to consider the factors mentioned hereinbefore. All that the section requires was that these

factors should be borne in mind but these must be subordinate to the executive decision of the need for public interest.

In Saraswati Industrial Syndicate Ltd. etc. v. Union of India, [1975] 1 S.C.R. 956 the Sugar (Control) order, 1966 came up for consideration. Clause 7(2) of the Sugar (Control) order had been set out at page 958 of the report. It read as follows:

> "Such price or maximum price shall be fixed having regard to the estimated cost of production of sugar determined on the basis of the relevant schedule of cost given in the Report of the Sugar Enquiry Commission (October 1965), subject to the adjustment of such rise in cost subsequent to the Report aforesaid as, in the opinion of the Central Government, cannot be absorbed by the provision for contingencies in the relevant schedule to that Report."

Beg, J. as the learned Chief Justice then was, observed that clause 7(2) set out above required the Government to fix the price "having regard to the estimated cost of production of sugar on the basis of the relevant schedule". The expression "having regard to" only obliges the Government to consider as relevant data material to which it must have regard to.

In so far as the High Court held in this judgment that the power conferred on the State Government was of the administrative nature, the High Court may not be in error. But the High Court held that it should be in consonance with the principles of natural justice, in our opinion-it must be in accordance with natural justice to a limited extent-and such principles of natural justice are enunciated by this Court in several decisions, namely, A.K. Kraipak v. Union of India, A.I.R. 1970 S.C. 150; M/s. Travancore Rayons Ltd. v. Union of India, A.I.R. 1971 S.C. 862 and Amal Kumar Ghatak v. State of Assam & others, A.I.R. 1971 Assam 32.

Keeping in view the aforesaid principles, the High Court examined the petitioners' grievance. Dr. Rajagopalan submitted his report to the State Government in January, 1979. Admittedly, Dr. Rajagopalan placed reliance on the report of Working Group on Aluminium set up by the Government of India in 1970 and various other reports of Bureau of Industrial Cost and Price (hereinafter refer red to as 'BICP'), submitted to the Government from time to time. It is based on the balance-sheet of the appellants and had been made available to the respondents. We have examined the correspondence that passed between the parties and we are of the opinion that there was no violation of the principles of natural justice because the relevant datas were made available to the appellants. It is true that the principles of natural justice must be adhered to. In this connection reference may be made to S.D. Hotop "Principles of Australian Administrative Law 6th Edition, Pages 210-212, Cases and Materials on Review of Administrative Action (2nd Edition) by S.D. Hotop, Wade on Administrative Law, 5th Edition, pages 506/507 and Bennion on Statutory Interpretation, 1984 Edition, pages 140-141. The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to re-

levant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of acts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. See Commissioner of Income Tax v. Mahindra & Mahindra Ltd. Ors., [1983] 3 S.C.R. 773 at 786-

787. The present case relates to the particular facts and circumstances of an individual, namely, Hindalco. To the extent, its claim for exemption was entitled to the consideration. In our opinion, the facts and circumstances of the case were examined in consonance with the principles of natural justice. All relevant factors were given consideration but subject to public interest. The High Court considered whether electricity duty was included in the prices of aluminium fixed by the Central Government. On this aspect our attention was drawn on behalf of the respondents at pages 372-387 of the judgment in Volume B. It was submitted that the assumption that electricity duty was included in the prices of Hindalco fixed by the Central Government formed a basic and a very important consideration in the making of the impugned order. We are unable to agree. It was also submitted that the said assumption was made by the State Government and Dr. Rajagopalan on the basis of the reports of BICP and the Working Group. The High Court on a perusal of the reports of the BICP and the Working Group came to the conclusion that the said assumption of the State and Dr. Rajagopalan is based on non-existent fact and/or is patently erroneous. Apparently such examination by the High Court was not warranted. It was pointed out that Dr. Rajagopalan had determined the adequacy of the profits of Hindalco by relating the same to the original subscribed capital only and had completely ignored the reserves of Hindalco. The aforesaid basis, it was held by the High Court is contrary to the well accepted principles of return on capital employed/net worth. It is true that Hindalco has made profits much more than it had before the imposition of the duty. The adequacy of the profits or whether it made much more profits is not a consideration which must prevail over public interest and the Government having taken into consideration this factor, in our opinion, did not commit any error and the High Court was in error in setting aside the order of the Government. It is true that the cost of power to similar industry in other State was a relevant factor and the State was under a mandatory duty to consider the same. The State has taken note of all those factors and has observed that M/s. Hindalco is being supplied with electrical energy at a very nominal rate and taking into consideration the prevailing practice of levy of electricity duty in other States as well as the provisions stated in section 3(4), the Government have come to the conclusion that there is no justification for allowing exemption from electricity duty to M/s. Hindalco. The Government did not commit any error which required interference by the High Court in the manner it did . The assurance of cheap power factor was there. But the assurance of cheap power factor does not foreclose the public interest of raising public revenue.

In July, 1975 the Central Government fixed uniform prices of aluminium for all the producers of aluminium. The Central Government also fixed uniform sale prices of aluminium applicable to all producers. The Central Government also fixed individual retention prices (based, inter alia, on the cost of production) for each individual producer. All producers of aluminium were to sell aluminium at the uniform sale prices. Any producer whose retention prices were lower than the sale prices had to pay difference into the Aluminium Regulation Account. Any producer whose retention prices were higher than the sale prices was entitled to receive the difference from the Aluminium Regulation Account. Price, therefore, was no question of the respondent being loser or sufferer. It is

true that electricity duty was not included and was also considered in the fixation of the price. That is the only pre-dominant factor, having regard to the technical nature of the order. The impugned order does not suffer from the vice of non- application of mind or non-consideration of the relevant factors and the High Court was in error in interfering with the order of the Government. We are clearly of the opinion that the High Court was in error in interfering with the order in the manner it did. The High Court should not have interfered for interference by the High Court the matter should have been far less cloudy and far more clear.

Natural justice in the sense that a party must be heard beforehand need not be directly followed in fixing the price. Reference in this connection may be made to the observations of this Court in Prag Ice & oil Mills and another etc. v. Union of India, [1978] 3 S.C. R. 293, where at page 325 of the report, this Court observed that in the ultimate analysis, the mechanics of price fixation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of operators, the processual basis of price fixation has to be accepted in the generality of cases as valid. In this connection reference may also be made to Shree Meenakshi Mills Ltd. v. Union of India, [1974] 2 S.C.R. 398, where this Court dealing with the Cotton Textile (Control) order, 1948 at page 419 of the report observed that if fair price is to be fixed leaving a reasonable margin of profit, there is never any question of infringement of fundamental right to carry on business by imposing reasonable restrictions.

Unreasonableness and natural justice have to be judged in that context. In that view of the matter non-supply of the basis of the report of the BICP does not by itself, in our opinion, in the facts and circumstances of the case make the order of the State Government vulnerable to challenge.

In Laxmi Khandsari etc. etc. v. State of U. P. & Ors [1981] 3 S.C.R. 92 this Court was dealing with the Essential Commodities Act, 1955 and the Sugarcane (Control) order, 1966 and observed that in determining the reasonableness of restrictions imposed by law in the field of industry, trade or commerce, the mere fact that some of the persons engaged in a particular trade may incur loss due to the imposition of restrictions will not render them unreasonable because it is manifest that trade and industry pass through periods of prosperity and adversity on account of economic, social or political factors. At page 129 of the report rejecting the plea that before fixing a price the rules of natural justice should be adhered to, this Court emphasised, referring to the observations in the case of Saraswati Industrial Syndicate Ltd. v. Union of India, [1975] 1 S.C.R. 956 that price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. There is scope for trial and error in such sphere. Judged by that standard, the impugned order in this case, in our opinion, is not bad.

In support of the proposition that the principles of natural justice had been violated in passing the impugned order, five decisions were referred to, namely, State of Orissa v. Mr. (Miss) Binapani Dei, [1967] 2 SCR 625; A.K Kraipak v. Union of India, A.I.R 1970 S.C. 150; Mohd. Rashid v. State of U.P. A.I.R. 1979 S.C. 592; S.L. Kapoor v. Jagmohan and others, A.I.R. 1981 S.C. 136 and Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597. The principles of these cases will have no application to the facts of this case. There has been no violation of the principles of natural justice to the extent applicable to the order of this nature.

Reference was made to the observations in the case of India Sugars & Refineries Ltd. v. Amravathi Service Co- operative Society Ltd., [1976] 2 S.C.R. 740 where at page 746 of the report, this Court observed that the power to grant exemption to factories from payment of additional price is intimately connected with the right of sugarcane growers to claim additional price. In granting of such power, principles of natural justice should be followed. In such a case a duty to act judicially does arise.

This Court in Commissioner of Income Tax, Bombay and others A v. Mahindra and Mahindra Limited & Ors., [1983] 3 S.C.R. 773 at page 786 of the report, dealt with the parameters of the Court's power of judicial review of administrative or executive action or decision. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same. See also the observations at page 787 of the report. In this case the parameters had been adhered to. All relevant factors had been borne in mind. It is true that each factor had not been independently considered, but these had been borne in mind. In our opinion, the Government did not act in violation either of the principles of natural justice or arbitrarily or in violation of the previous directions of the High Court.

In the premises, the High Court was in error in setting aside the order of the State Government in its entirety. The High Court should have allowed the claim of Hindalco for the reduced rate of bill on the basis that Renusagar Power Plant was its own source of generation under section 3(1)(c) and the bills should have been made by the Board on that basis. But the High Court was in error in upholding the respondents' contention that the State Government acted improperly and not in terms of section 3(4) of the Act and in violation of the principles of natural justice. We, therefore, allow the appeal to the extent indicated above and set aside the judgment of the Allahabad High Court to that extent and restore the State Government's impugned order subject to the modification of the bills on the basis of own source of generation. We, therefore, direct that the electricity bills must be so made as to give Hindalco the benefit of the rate applicable to its own source of generation from Renusagar Plant.

The appeal is disposed of in those terms. The electricity bills must be computed as indicated above. After recomputation and presentation of such bills the respondents will pay the same within two months thereof.

In view of the facts and circumstances of the case, the parties will pay and bear their own costs.

RANGANATHAN, J. I agree. On the second issue, I think it is difficult to define the Precise nature of the power conferred on the State Government under Section 3(4) of the Electricity Duty Act and l A have doubts whether the sub-section can at all be interpreted as conferring a right on individual consumers to require that, in the light of the material adduced by them, the rates applicable to them should have been fixed differently or that they should have been exempted from duty altogether. However, it is unnecessary to pursue this aspect further as I agree with the conclusion of my learned brother that, in this case, the respondent's representations have been fully considered and the

requirements of natural justice have been fulfilled and that there is no warrant to interfere with the order of the State Government.

S.L. Appeal disposed of.