

M/S Hyderabad Vanaspathi Limited vs Andhra Pradesh State Electricity Board ... on 1 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1715, 1998 (4) SCC 470, 1998 AIR SCW 1495, 1998 (2) SCALE 603, 1998 (4) ADSC 163, 1998 (1) UJ (SC) 595, (1998) 3 APLJ 5, 1998 ADSC 4 163, (1998) 3 JT 84 (SC), 1998 UJ(SC) 1 595, (1998) 2 SCR 620 (SC), 1998 (3) JT 84, (1998) 2 SCALE 603, (1998) 29 CORLA 253, (1998) 4 SCJ 409, (1998) 3 SUPREME 454, (1998) 2 ICC 231, (1998) 3 CIVLJ 571

Bench: S.C. Agrawal, S.Saghir Ahmad, M. Srinivasan

PETITIONER:

M/S HYDERABAD VANASPATHI LIMITED

Vs.

RESPONDENT:

ANDHRA PRADESH STATE ELECTRICITY BOARD AND ORS.

DATE OF JUDGMENT: 01/04/1998

BENCH:

S.C. AGRAWAL, S.SAGHIR AHMAD, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T SRINIVASAN, J.

I. Relevant facts, The appellant in the earlier appeal of 1988 is a public limited company engaged in the manufacture of Vanaspathi. It entered into two agreements with Andhra Pradesh State Electricity Board hereinafter referred to as `Board' on 1.9.1970 and 27.8.1973 for supply of High tension power. In January, 1976 the officers of the Board inspected the factory premises and noticed pilferage of energy. The power supply was immediately disconnected and a provisional assessment of the loss was made at Rs. 61,28,535/-. A prosecution was launched under Section 379 I.P.C. read

with Section 39 of the Indian Electricity Act, 1910, hereinafter referred to as the Electricity Act in the court of the Chief Metropolitan Magistrate, Hyderabad. The Board also initiated proceedings calling upon the appellant to file its objections to the provisional assessment. The appellant denied the allegations made by the Board. After enquiry, the final assessment was made fixing the lost at Rs. 55,511.81 Ps. The order was challenged by the appellant in appeal but in vain. The appellant filed a suit in the court of Additional Chief Judge, City Civil Court (Temp), Hyderabad for a declaration that it was not liable to pay any amount as penal damages and prayed for a direction for refund of the amount of Rs. 22.50 lakhs collected by the Board during the pendency of the assessment proceedings and for perpetual injunction restraining the defendants therein from disconnecting the power supply.

2. The suit was contested by the Board. Several issues were raised including one relating to the jurisdiction of the civil court. The trial court held that it had jurisdiction to try the suit but negatived all the contentions of the plaintiff and dismissed the suit. On appeal, a Division Bench of Andhra Pradesh High Court rejected the pleas of the appellant and dismissed the same. The High Court held that the terms and conditions of supply on the basis of which the agreements were entered between the appellant and the Board did not in any way contravene the provisions of either the " Electricity Act or the Electricity (Supply) Act. It was also found that ample opportunity was given to the appellant before the final order of assessment was made and that the enquiry held by the officers of the Board was in no way vitiated. Aggrieved by the said decision of the High Court the appellant preferred the said appeal on obtaining Special Leave of this court.

3. The questions which were decided by the High Court in the aforesaid proceedings were raised again in Writ Petitions under Article 226 of the Constitution of India by some industrial undertakings which had also entered into agreements with the Board for supply of electricity. When proceedings were initiated by the Board against those industrial undertakings on the ground of pilferage of electrical energy and supply was disconnected pending enquiry, those undertakings filed Writ Petitions challenging the validity of such proceedings. In one of the writ petitions, an appeal was filed against an Interlocutory Order refusing to grant interim relief to the petitioner therein. When that appeal was admitted by a Division Bench the matter was placed before a Full Bench for disposal as the Division Bench opined that the view taken by the Division Bench in the Civil Appeal referred to earlier was likely to be in conflict with the "possible view that the contractual obligation upon the consumer of electricity that in case of a dispute as to the consumption, the adjudication shall be by the officers of the Board shall be deviative of Article 14 of the Constitution of India". Thus all the writ petitions and the writ appeals against interlocutory orders were heard by a Full Bench of three Judges and disposed of by a common judgment dated 12.9.1997.

4. The Full Bench opined that the creation of the adjudicatory process by a contractual obligation in condition no. 39 of the 'Terms and Conditions of Supply' of electricity was wholly vitiated" The Full Bench observed that though there is no bar against the Board to recover compensation for the loss caused to it even when a consumer is prosecuted for the same offence under the Act, the enquiry into the estimate of the loss should be made by an independent and properly constituted body. Ultimately the Full Bench concluded its order as follows:

"In view of the above discussion, we have no hesitation to hold that condition 39 of the conditions framed by the Board, to the extent it prescribes the procedure for adjudication of the dispute relating to pilferage or malpractice of energy and for final assessment of the additional charges, is ultravires of Section 24, 26 (6) and C1.IV(3) of schedule of the Act of 1910 and Sect. 49 of Act of 1948, and is wholly vitiated as being arbitrary and violative of Article 14 of the Constitution and is accordingly struck down. However, the contention of the learned Advocate General that the Board is empowered to regulate the supply of energy including the power of disconnection, on a prima facie satisfaction or suspicion of a conduct amounting to malpractice or energy on ground of including malpractice of pilferage of energy. The conditions in the agreements in Appendix III & IV also contain stipulation of disconnection of supply on suspicion of violation of conditions. Thus, if an allegation is made of malpractice or pilferage against the consumer and if the consumer denied the allegation and makes an application to the Electrical Inspector, holds on preliminary facts, that he has no jurisdiction in the matter, then the Board is empowered to take such step as it may deem proper and appropriate including disconnection of supply on certain conditions. This action of the Board, is however, subject to the scrutiny by a court of law".

5. It is against the said judgment of the Full Bench the Board has filed the Civil Appeals Nos. 7139-7144 of 1997. All the appeals have been heard together as the contentions are common. For the sake of convenience, the parties will be hereafter referred to as the Board on the one hand and the consumers on the other.

6. The chief argument advanced on behalf of the consumers is that condition number 39 in the 'Terms and Conditions of Supply' of electricity which are purely contractual is ultravires the provisions of the Indian Electricity Act, 1910 hereinafter referred to as the 'Electricity Act' and Electricity (Supply) Act, 1948 hereinafter referred to as the 'Supply Act'. Alternatively, it is contended that even if the terms are statutory in nature, the condition is not valid. Thirdly, it is argued that the said condition is violative of Article 14 of the Constitution of India. Per contra, it is contended on behalf of the Board that it is performing a statutory obligation to supply electricity and has been empowered by the provisions of Section 49 of the Supply Act to impose such terms and conditions as it thinks fit. The conditions which have been so imposed including condition number 39 are statutory in character and are in no way contrary to the provisions of either of the enactments. The conditions are also quite reasonable and cannot in any sense be termed arbitrary and violative of the provisions of Article 14 of the Constitution of India.

II. RELEVANT STATUTORY PROVISIONS

7. Before advertng to the rival contentions, it is necessary to refer to certain provisions in the two enactments namely Electricity Act and the Supply Act. An Electricity Act was passed originally in 1903 but it was repealed by the Electricity Act which amended the law relating to the supply and use of electrical energy. The said Act was not a complete Code on the subject. It was apparently found to be inadequate for coordinating development of electricity on regional basis. Hence, the Supply Act

was enacted in 1948 to provide for rationalisation of the production and supply of electricity and generally for taking measures conducive to electricity and generally for taking measures conducive to electricity development. While the earlier Act deals with the supply and use of electric energy and the rights and obligations of the licensees, the later Act deals with statutory power and functions of the Central Electricity Authority, State Electricity Boards and Generating companies. Section 70(1) of the later Act provisions in so far as there is any inconsistency therewith in the provisions of the earlier Act or any Rules made thereunder or any instrument having effect by virtue of the said Act or Rules. The proviso to sub-section (1) clarifies that nothing in the later Act shall be deemed to prevent the State Government from granting, after consultation with the Board, a licence not inconsistent with the provisions of the earlier Act to any person in respect of such area and on such terms and conditions as the State Government may think fit. Sub-s.(2) makes it clear that save as otherwise provided in the later Act, the provisions of the Act shall be in addition to and not in derogation of the earlier Act.

8. Section 26 of the Supply Act is to the effect that the Board shall in respect of the whole State have all the powers and obligations of the licensee under the Electricity Act and the later Act shall be deemed to be the licence of the Board for the purpose of the earlier Act. The first proviso to the Section 3 to 11, sub-ss. (2) and (3) of Section 21, Section 22, sub-section (i) to (v), clause (vii) and clauses (ix) to (xii) of the Schedule to the Electricity Act relating to the duties and obligations of a licensee. The second proviso states that the provisions of clause (vi) to the Schedule to the earlier Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them had commenced.

9. In view of the provisions of Section 26 of the Supply Act our attention has been drawn by the learned counsel for the consumers to some only of the provisions of the Electricity Act. Section 20 sets out the power of the licensee or any person duly authorised by the licensee to enter the premises to which energy has been supplied and remove fittings, etc. in certain circumstances and the procedure therefore. Sub-sections (1) and (4) of Section 21 are in the following terms :

"Section 21(1). A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him or save as provided (in any conditions made under sub-s. (2) or) by Section 23, sub-s. (2), or by Section 26, sub-s.(7), in any way to control or interfere with the use of such energy :

provided that no person may adopt any form of appliance, or use the energy supplied to him so as to unduly or improperly to (interfere with -

(a) the safety or efficient working of licensee electric supply lines or other works ; or

(b) the supply of energy by the licensee to any other person).....

"(4) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered any appliance or controlled or interfered with the use of energy in contravention of sub-section (1), the matter shall be either

referred to an Electrical Inspector and decided by him, or, if the licensee or consumer so desires, determined by arbitration."

Section 24(1) and (2) read as follows :-

"(1) Where any person neglects to pay any charge for energy or any (sum, other than a charge for energy,) due from him to a energy to him, the licensee may, after giving not less than seven clear days notice in writing to such person and without prejudice to his right to recover such charge or other sub my suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer. (2) Where any difference or dispute (which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector) before as aforesaid has been given by the licenses, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

PROVIDED that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the (Electrical Inspector) of the amount of the licensee's charges or other sums in dispute the deposit of the licensee's further charges for or for energy as they accrue, and t he consumer has failed to comply with such request.) Section 26(6) is in the following terms :

"Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon t he application of either party, by an Electrical Inspector; an d where the meter has, in the opinion of such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity :

PROVIDED that before either a licensee or a consumer applies to the Electrical Inspector applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days, notice of his intention so to do".

10. Learned counsel has also draw our attention to Section 35 and 36 of the said Act as well as Rules 4 to 6 of the Indian Electricity Rules framed under the Act. Section 35 deals with the constitution of the Advisory Board and Section 36 deals with the appointment of Electrical Inspector. Rules 4 to 6 provide for the qualifications of Inspectors etc. We are not extracting those provisions as they are unnecessary in this case. In the course of arguments our attention has also been drawn to Rule 27 which provides for Model conditions or supply as contained in Annexure VI.

11. Apart from the above, strong reliance is placed on Clause VI of the Schedule to the Act which deals with requisition for supply to owners or occupiers of any premises situate within the area of supply of a licensee. Sub-clause (1) and sub-clause (3) of Clause VI read as follows :-

VI. Requisition for supply to owners or occupiers in vicinity (1) Where, (after distribution mains have been laid down under the provisions of Clause IV or Clause V and the supply of energy through those mains or any of them has commenced.) a requisition is made by the owner or occupier of any premises situate within (the area of supply) requiring the licensee to supply the energy for such premises the licensee shall, within one month from the making of the requisition, (or within such longer period as the (Electrical Inspector) may allow) supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrence beyond his control continue to supply, energy in accordance with the requisition.

.....

.....

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, (or as to the position of the meter board) or as to the improper uses of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-cl.(1), the matter shall be referred to and (Electrical Inspector) and decided by him.

12. Turning to the provisions of the Supply Act, apart from the Sections which we have referred to earlier, reference may be made to Sections 18 and 19. While Section 18 sets out the general duties of the Board, Section 19 sets out the powers of the Board. Section 49 is the most relevant provision in this case and it reads as follows :

"Section 49. Provision for the sale of electricity by the Board to persons other than licensees.-- (1) Subject to the provisions of this Act and or regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any or the following factors, namely-

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the

licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity of sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity of any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person".

13. Section 78 enables the Government to frame Rules to give effect to the provisions of the Act. Section 79 empowers the Board to make regulation not inconsistent with the Act and the Rules made thereunder to provide for all or any of the matters set out therein. One of them is "(i) principles governing the supply of electricity by the Board to persons other than licensees under Section 49". Section 79A provides that every rule made by the State Government under Section 78 and every regulation made by the Board under Section 79 shall be laid as soon as may be before the State Legislature.

II. RELEVANT CLAUSES OF THE TERMS AND CONDITIONS OF SUPPLY

14. Clause 39 which is the main target of attack defines various malpractices and provides for enquiries by designated officials. Clauses 39.4, 39.5., 39.6 read as follows :-

Clause 39.4 Officers authorised to inspect and deal with cases of malpractice and pilferage of energy are as indicated below :

Sl.No. Particulars Officer or officers authorised To inspect the To disconnect and issue To make premises and provisional assessment final ass.

make provision	notice to the consumer	appellate
-al assessment		authority

2. H.T. Service ADE.DE ADE S.E. C.E. including & S.E. incharge temporary supply

"Clause 39.5 Where on the inspection of consumer's

installations or premises or on the basis of other information or data there is scope for suspecting that a consumer is guilty of "supply of electricity to any service, which, is disconnected by the Board" of "pilferage of energy", the officer authorised in this benefit by the Board may without prejudice of Board's other rights, cause consumer to be forthwith disconnected without any notice and report the matter to the Final assessing authority. In the case of the malpractices other than the one mentioned above, supply shall be disconnected only in the event of failure on the part of the consumer to pay half of the estimated amount within the period stipulated in the provisional assessment notice."

"Clause 39.6 Provisional assessment on the loss sustained by the Board and payment:

The inspecting officer shall make a provisional estimate of the loss incurred by the Board by the reason of the malpractice or pilferage of energy committed by the consumer which shall be assessed as mentioned herein below and intimated to the Assistant Divisional Engineer concerned. The A.D.E. concerned shall ensure disconnection of such services forthwith in the case of malpractice with reference to supply of electricity to any disconnected service or pilferage of energy. The Assistant Divisional Engineer shall then serve the consumer with a notice of provisional assessment in the prescribed form. Such notice shall mention, inter alia.,

(a) the matters noticed during the inspection of the consumer's premises and installations.

(b) the reasons for disconnection already effected or propose to be effected and

(c) a provisional estimate of the losses sustained by the Board computed in the prescribed manner.

He shall inform the consumer to pay half of the provisionally assessed amount, pending the enquiry to be conducted by the concerned authority into the case, to secure restoration of supply where supply has been disconnected or to avoid discontinuance of supply where such payment is made the consumer's service shall not be disconnected on this ground pending the enquiry".

15. The provisional assessment of the loss referred to in Clause 39.6 shall be made on the principles set out in clause 39.7.1 and 39.7.2. It is provided that assessment shall be made for the estimated period of malpractice subject to a maximum of one year prior to the date of inspection. Clause 39.8.1 and 39.8.2 provide for provisional assessment notice in the case of malpractices other than supply of electricity to disconnected premises and disconnection of service on the consumer's failure to pay the provisionally assessed amount.

16. Clause 39.9 is in the following terms :

Clause 39.9.1 After the provisional assessment notice is served upon the consumer as mentioned in clause 39.3 thereof the officer authorised in this behalf by the Board (see statement referred to in clause 39.4 above) shall issue a show cause notice in the forms prescribed therefore advising the consumer to file his representation if any, within 30 days from the receipt of the notice.

Clause 39.9.2 The said officer of the Board shall, after the expiry of the aforesaid notice period, enquire into the matter and after giving reasonable opportunity to the consumer and taking into account all relevant facts and circumstances shall decide whether the consumer has committed malpractice or pilferage of energy and if so satisfied proceed to assess to the best of his judgment, the loss sustained by the Board on account of such malpractice or pilferage of energy by the consumer. The consumer may be represented by an advocate at the time of personal hearing provided the consumer files proper vakalatnama.

Clause 39.9.3 The final assessing authority shall then pass an order setting out his conclusions and the reasons thereof and communicate a copy of the order to the consumer and demand the amount if any due from the consumer on the basis of such order after giving credit to the amounts paid by him.

Clause 39.9.4 Payment of amount of final assessment. The consumer shall pay to the Board within 30 days of the receipt of final assessment order, the amounts demanded therein".

17. Against the order of final assessment an appeal lies to the designated authority. The appellant may be represented by an advocate before the appellate authority at the hearing. The appellate authority shall give his reasons for his conclusion except in cases where the appeal is allowed in toto. Clause 39.10.6 provides that the order on appeal shall be final subject to clause 39.11 and be not liable to be questioned in any court of law clause 39.11 is in the following terms :

Clause 39.11 The Chairman or his nominee (the nominee being any member of the Board) may suo moto at any time call for and examine the record of any order passed or proceedings recorded by the final assessment authority or appellate authority for the purpose of satisfying himself regarding the propriety of legality of such order of proceeding and may pass such order in reference thereto, as he may think fit. No orders adverse to the consumer shall be passed without giving notice and opportunity for making a written representation to the consumer. The order passed by the Chairman or his nominee shall be final and not liable to be questioned in any court of law. The consumer shall have no right to invoke this provision".

18. Clause 46 reads thus :-

"Interpretation: These conditions shall be read and construed as being subject in all respects to the provisions of the Indian Electricity Act, 1910, Indian Electricity Rules, 1956 and the Electricity

(Supply) Act, 1948 in force and as amended from time to time and to the provisions of any other law relating to the supply of electricity for the time being in force and nothing herein above contained in these conditions shall abridge or prejudice the rights of the Board and the consumer under any Central Act or State Act or rules made thereunder".

19. Appendix-III contains the form of H.T. agreement. The relevant clauses read as follows :

APPENDIX - III Form of H.T. Agreement "Agreement executed this day of19 by.....for themselves/himself/itself and for their/his/her assigns and successors in favour of the Andhra Pradesh State Electricity Board a statutory corporation constituted under section 5 of the Electricity (Supply) Act, 1948 and its successors and assigns herein after called the Board.

2. SUPPLY OF POWER I/We the above mentioned have requested the Board to Supply Electricity at High Tension for the purpose ofand the Andhra Pradesh State Electricity Board agreed to afford such conditions notified by them from time to time under section 49 of the Electricity (Supply) Act, 1943 and those herein after mentioned.

3. LOAD/MAXIMUM DEMAND I/We agree to take from the Andhra Pradesh State Electricity Board Electric Power for a maximum load not exceeding.....KVA which shall b e taken to be my/our contracted demand for our exclusive use for the purposes above mentioned, at our Mills/Factory/premises situated at.....My/our contracted load shall be.....Hp not effect any change in the maximum demand or contracted load.

4. RE-SALE OF ELECTRIC POWER I/We undertake that; I/We shall not sell electrical energy obtained under this agreement without the sanction in writing of the Board.

5. OBLIGATION TO COMPLY WITH REQUIREMENT OF ACTS AND TERMS AND CONDITIONS OF SUPPLY:

I/We further undertake to comply with all the requirements of the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 the Rules thereunder, provisions of the tariffs scale of Miscellaneous and General charges and the Miscellaneous and General charges and the terms and conditions of supply prescribed by the Board from time to time and agree

.....

.....

I/We hereby agree that if I/We am/are found indulging in their of energy or any malpractice in respect of use of electrical energy I/We shall pay additional charges as may be levied by the Board. I/We also agree that in such an event the Board shall in addition to levy of the additional charge have right to disconnect supply of electricity to my/our premises for such period as may be decided by the Board. Signature of Consumer".

IV NATURE OF AGREEMENT - STATUTORY OF CONTRACTUAL

20. We have already seen that Section 49 of the Supply Act empowers the Board to prescribe such terms and conditions as it thinks fit for supplying electricity to any person other than a licensee. The section empowers the Board also to frame uniform tariffs for such supply. Under Section 79(j) the Board could have made regulation therefore but admittedly no regulation has so far been made by the Board. The Terms and Conditions of Supply were notified in H.P. Ms. No. 690 dated 17.9.1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20.10.1975. They were made applicable to all consumers availing supply of Electricity from the Board. The section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.

21. In Punjab State Electricity Board Versus Bassi Cold Storage, Kharar and Another 1994 Supp (2) S.C.C. 124, this court held that the conditions of supply are akin to subordinate legislation.

22. In Bihar State Electricity Board and Others Versus Parmeshwar Kumar Agarwala and Others (1996) 4 S.C.C. 686, the court held that they are part of statutory terms and conditions. In para 16 of the judgment the court said :

"Before we advert to the effect produced by a combined reading of the four clauses, it deserves to be pointed out that the terms and conditions have sacrosanctity, in that Rule 27 of the Indian Electricity Rules, 1956, framed by the Central Electricity Board in exercise of power under Section 37 of 1910 Act has, read with Annexure VI thereof, provided the model conditions of supply which are required to be adopted by the State Boards. It is on the basis of this statutorily prescribed model, with suitable variations, that energy had been supplied by the Board to the consumers. The model conditions can be said to be akin to the model Standing Orders prescribed by Industrial Employment (Standing Orders) Act, 1947, which, when terms and conditions of service between the employer and employees and they govern the relationship between the parties, as held in Workmen V. Firestone Tyre & Rubber Co. of India (P) Ltd., SCC at p.832 (1973) 1 S.C.C. 813. We are inclined to think that

similar is the effect of terms and conditions, on which a State Board supplies energy to the consumers".

23. Learned counsel for the consumers has referred to *Shri Vidya Ram Misra Versus Managing Committee, Shri Jai Narain College* (1972) 1 SCC 623. In that case Statute 151 framed under the Lucknow University Act, 1920 provided that the terms and conditions of service of a teacher must be incorporated in the contract to be entered into between the teacher concerned and the college. Hence the court held that the terms and conditions mentioned in Statute 151 had *proprio vigore* no force of law. That decision has no relevance here.

24. The ruling in *Executive Committee of Vaish Degree College. Shamli and others Versus Lakshmi Narain and others* (1976) 2 SCC 58 cited by learned counsel has no applicability as the court found on the facts that the Executive Committee was not a statutory body.

25. We are unable to uphold the view expressed by the Full Bench in the judgment under appeal that the terms and conditions of supply are purely contractual. In our opinion the Terms and Conditions of Supply are statutory in character.

V. The Supply Act

26. It is contended that Clause 39 of the Terms and Conditions of Supply falls outside the power conferred on the Board in Sec. 49 of the Supply Act. According to learned counsel the power of the Board to impose such terms and conditions as it thinks fit, is expressly made subject to the other provisions of the Act which means that the Board can impose only such conditions as may be found in an agreement between other ordinary licensees and consumers. The contention is that the Board can neither define 'malpractices' nor prescribe an adjudicatory machinery for assessing and levying penal damages. Such matters are, according to counsel, essential legislative functions. Which cannot be delegated to the Board.

27. We are unable to accept the contention. Section 49 empowers the Board to supply electricity on 'such terms and conditions as it thinks fit'. It may also frame uniform tariffs. We have found that the terms and conditions of supply are statutory in character. They can be invalidated only if they are in conflict with any provision of the Act or the Constitution. Learned counsel have not shown to us any provision in the Supply Act with which Clause 39 is in conflict. In so far as the Supply Act is concerned, argument hovers around Section 49 only. The only limitation in that Section is that the terms and conditions of supply should be subject to the provisions of the Act. Clause 39 does not violate any provision in the Supply Act. It is the statutory duty of the Board to arrange for the supply of electricity throughout the State and for transmission and distribution of the same in the most efficient and economical manner. For that purpose it has necessarily got to prevent unauthorised user, pilferage or malpractices by the consumers. Hence the necessary safeguards have to be provided as part of the conditions of supply so that the consumers will be bound by them. While on the one hand, the Board has to recoup the loss suffered by such pilferage or other malpractices., it has also on the other got to stop immediately the continuation thereof. Hence the terms and conditions of supply have to provide for compensation as well as immediate disconnection. For

ascertaining the loss and fixing the compensation, uniform procedure has to be framed and a machinery constituted. Clause 39 is only doing that. Every consumer is made fully aware of the said terms and he signs the contract only on that basis. He gives an undertaking in that contract that if he is found indulging in any malpractice etc. he shall pay additional charges as may be levied by the Board and that the Board have the right to disconnect supply of electricity to his premises for such period as may be decided by the Board.

28. Learned counsel for the consumers has drawn our attention to *Powell Versus May* (1946) All E.R. 444 wherein a bye-law made by the local country council was struck down as ultra vires the powers of the council as it was repugnant to the provisions of certain statutes. The ruling has no application here.

29. Strong reliance is placed on the decision of the Queen's Bench Division in *Commissioners of Customs and Excise Versus Cure & Deeley Ltd.* (1961) 3 All E.R. 641. The Commissioners of Customs and Excise were empowered by Section 33 (1) of Finance Act 1940 to make regulations providing for any matter for which provision 'appears to them necessary' for the purpose of "giving effect to" the statutory provisions relating to purchase tax "and of enabling them to discharge their functions thereunder". The Commissioners made the Purchase Tax Regulations 1945. Regulation 12 provided that if any person failed to furnish a return as required by the regulation the Commissioners might determine the amount of tax appearing to them to be due and demand payment thereof which shall be deemed to be the proper tax. The Court held that the said Regulation 12 was ultra vires on three grounds : (i) It was no part of the functions assigned to the Commissioners to take on themselves the powers of a High Court Judge and decide issues of fact and law as between the Crown and the subject;

(ii) It renders the subject liable to pay such tax as the Commissioners believed to be due, whereas the charging section impose a liability to pay such tax as in law is due"

(iii) It was capable of excluding the subject from access to the courts and of defeating pending proceedings.

30. The ruling does not help the consumers in this case. The impugned Clause 39 does not suffer from the vices mentioned above. No doubt, Clause 39.10.6 provides that the order on appeal shall be final subject to Clause 39.11 and not liable to be questioned in any Court of Law. But learned senior counsel for the Board, Mr. Shanti Bhushan, has fairly conceded that the orders are subject to judicial review and the jurisdiction of Courts cannot be taken away by that Clause. It is to be noted that the trial court and the High Court and the High Court have in this case upheld the jurisdiction of the civil court to entertain the suit and consider the validity of the orders passed by the Board against the consumers.

31. Reliance is placed on the decision in *Indian Express Newspaper (Bombay) pvt. Ltd. and others etc. etc. versus Union of India & others etc.etc.* (1985) 1 S.C.C. 641 to support the argument that Clause 39 is in breach of the principle of delegated Legislation. According to learned counsel the terms and conditions of supply may tantamount to a subordinate legislation but it must yield to the

plenary legislation and that the Supply Act never intended to confer powers on the Board to frame such terms and conditions of supply including the power to adjudicate a dispute between itself and the consumer and assess the damages. We have already adverted to the provisions of Section 49 of the Supply Act and pointed out that the power conferred on the Board is not circumscribed by any limitation other than that it should not contravene the provisions of the Act. We are of the opinion that Section 39 is not violative of any provisions of the enactment.

32. In *Jiyajeerao Cotton Mills Ltd. & Anr, Versus Madhya Pradesh Electricity Board & Another* 1989 Supp. (2) S.C.C. 52 the court held that the Board has powers under Section 49(1) and (3) to levy higher charges for excess consumption of electricity and it is not essential for the Board to make regulations indicating the basis for such levy before making the demand.

33. Our attention has been drawn to *Agricultural Market Committee Versus Shalimar Chemicals Works Ltd.* (1977) 5 Supp. S.C.C. 516 in which it has been held that a delegate while making subsidiary rules or regulations cannot widen or restrict the scope or the Act or the policy or principle. The proposition has no application in the present case as we have found that the Board has not in any way violated any of the provisions of the Act by framing the terms and conditions of supply including Clause 39. Hence we reject the contention that Clause 39 is ultra vires the provisions of the Supply Act.

VI. The Electricity Act

34. It is vehemently argued that provisions in Clause 39 run counter to the relevant provisions of the Electricity Act. In particular, it is said that Clause 39.1 covers the same field as that of ss.21 (4) and 26 (6)(b) and Clause VI(3) of the Schedule in the said Act. According to learned counsel malpractice and pilferage defined in CI.39 would be covered by the aforesaid provisions of that Act and the authority to decide the same is the Electrical Inspector appointed by the Government and not the officers of the Board. It is also argued that Clause 39.2 and 39.3 are contrary to Sec.20 of the Act and Clause 39.4 is contrary to Sec. 36 of the Act read with Rules 4 to 6 of the Indian Electricity Rules. According to learned counsel, the entire clause 39 is violative of the provisions of Clause VI(I) in the Schedule to the Electricity Act as the latter enjoins on the Board to continue the supply of electricity 'save in so far as prevented by cyclone, floods, storms and other occurrences beyond its control. In short, the contention of the learned counsel for the consumers is that the procedure prescribed in the Electricity Act and the Rules would apply to all situations arising between the Board and the consumer and the same should be followed. According to him Clause 39 is invalid and unenforceable in as much as it deviated from the provisions of the Electricity Act and the Rules.

35. We are unable to accept any of the aforesaid contentions. We have carefully perused the provisions of the Electricity Act and we find that those provisions provide for a different situation. Clause 39 will come into play whenever there is malpractice or pilferage on the part of the consumer or a fraud played by the consumer. The Electrical Inspector has no jurisdiction to deal with those matters. He can be approached only when there is a defective meter or any defect in wires, fittings, works or apparatus. As regards, CI. (VI) of the Schedule to the Electricity Act, it is not applicable unless distribution mains have been laid down under the provisions of Clause (IV) or Clause (V) and

the supply of energy through those mains of any of them has commenced. The provisions of Section 26 of the Supply Act exclude the applicability of Clauses (1) to (V) of the schedule to the Board. Hence Cl. (VI) of the schedule cannot by itself apply and that is why the second proviso to Section 26 clarifies the position that the provisions of Clause (VI) of the Schedule shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. The records before us do not disclose any pleading on the part of the consumers that the requirement of the second proviso to Section 26 have been satisfied. No question has been raised in that regard before the trial court. No doubt, the Full Bench of the High Court has placed reliance on Clause (VI) of the Schedule and the grounds raised in the Special Leave Petition filed by the Board do not refer to the same. But in the absence of a specific pleading to that effect it cannot be presumed that Clause (VI) of the Schedule would apply. Even assuming that clause applied, it will not alter the situation. The difference or dispute referred to in sub-cl.(3) of Cl.(VI) will not cover fraudulent malpractice or pilferage. A perusal of the said sub/clause makes it evident that the matter shall be referred to an Electrical Inspector only in cases of defects mentioned therein and not otherwise. We have no hesitation to reject the contention of learned counsel for the consumers and hold that the provisions in clause 39 do not contravene the provisions of the Electricity Act.

36. In *State of U.P. and others Versus Hindustan Aluminium Corpn. and others* (1979) 3 S.C.C. 229 the Court considered the expression "regulating" in Section 22 (b) of the Electricity Act and observed that the word "regulate" does not include prohibition. The ruling has no relevance whatever in the present case. In *Andhra Pradesh Carbides Ltd. and another versus Andhra Pradesh State Electricity Board, Hyderabad and others* AIR 1986 Andhra Pradesh 37 a Single Judge of the Andhra Pradesh High Court held that regulations made under the Supply Act shall not be covered by Section 70 thereof and that Section 49 read with Section 70 of the said Act does not empower the provisions of Section 24 of the Electricity Act. The ruling has no bearing in the present case as we have found that Clause 39 of the Terms and Conditions of Supply do not contravene the provisions of either Act.

37. In *M.P.E.B. and others versus Smt. Basantibai* 1988 (1) S.C.R 890 this Court held that a dispute regarding the commission of fraud in tampering with the meter and breaking the body-seal is one outside the ambit of Section (26(6) of the Electricity Act an Electrical Inspector has no jurisdiction to decide such cases of fraud. This Court has clearly pointed out that under Section 26(6) if the dispute is as to whether the meter is or is not correct, it is to be decided by the Electrical Inspector. We are entirely in agreement with that judgment.

38. In *Municipal Corporation of Delhi versus Ajanta Iron & Steel Company (Pvt.) Ltd.* (1990) 2 S.C.C. 659 this court found that there was a provision in the agreement between the Delhi Electric Supply Undertaking and the consumer for service of notice as a pre-requisite for disconnection. Hence this Court upheld the decree for mandatory injunction directing restoration of supply of electricity discontinued during the pendency of the suit without issue of such notice.

39. In *M.P. Electricity Board, Jabalpur and others Versus Harsh Wood Products and Another* (1996) 4 S.C.C. 522 the Court held that Section 24 of the Electricity Act would apply to a case of regular

supply made and prior demand of payment of electricity charges and it does not apply to demand to detection of pilferage. The court upheld the validity of similar conditions of supply of electricity and held that on a prima facie conclusion of power-theft reached by the authorities, it was not necessary to give further hearing to the consumer and the action taken by the Board disconnecting the supply was not violative of Article 20 (1) and 14 of the Constitution and the principles of natural justice. We are in agreement with the view expressed therein.

40. In Belwal Spinning Mills & Ors, Versus U.P. State Electricity Board and another (1977) 6 S.C.C. 740 the Court dealt with the provisions of Sections 26(6) and 26(7) of the Electricity Act alongwith Section 20 thereof. A perusal of the judgment shows that the Bench was of the view that the provisions of Section 26 would apply only when the dispute related to the correctness of the meter. That ruling also supports the contention of the Board in this case. VII. Article 14, Constitution of India.

41. What remains to be considered is whether Clause 3 is violative of Article 14 of the Constitution of India. Under this head, the argument of learned counsel for consumers is that the provisions in the clause are wholly unreasonable and against the principles of Natural Justice. According to them, the clause enables the officers to disconnect the service on a suspicion of malpractice and the consumer has to pay 50% of the provisional assessment amount before getting it restored. It is also contended that the officials of the Board are enabled to judge its own cause and the doctrine of bias will apply. In support of these contentions, our attention is drawn to :

1. J. Mohapatra and Co. and Another versus State of Orissa and Another (1984) 4 S.C.C. 103.
2. State of Karnataka versus Shree Rameshwara Rice Mills, Thirthahalli, (1987) 2 S.C.C. 160.
3. Krishna Bus Service Pvt. Ltd. versus State of Haryana and Others, (1985) 3 S.C.C. 711.
4. Rattan Lal Sharma versus Managing Committee, Dr. Hari Ram (CO-education) Higher Secondary School and Others, (1993) 4 S.C.C 10.
5. LIC of India and Another versus Consumer Education & Research Centre and Others, (1995) 5 S.C.C. 482.

None of the ruling will apply in this case. We have already referred to the judgment of this court in M.P. Electricity Board, Jabalpur and others versus Harshwood Products Case (1996) 4 S.C.C. 522 wherein it was held that when power theft was found by the officials, immediate disconnection of the supply was not violative of Article 14 of the Constitution and principles of Natural Justice would not apply.

42. In *Petal Parshottamdas Vanmalidas, versus Gujarat Electricity Board and another*, AIR 1987 Gujarat 188, a Division Bench of Gujarat High Court considered similar conditions and upheld their validity. The Bench said :

"Thus, it is clear that the Board has formulated such a condition in order to safeguard its interest. Such a condition is there for the purpose of checking, apart from other things, the theft of electricity. It is not a case of any defective meter, but it is a case of theft of electricity by the consumer concerned. As a matter of fact, in this case it is alleged that the petitioner, by inserting a plastic strip, was able to stop the running of the meter and thereby, committed theft of electricity. The condition clearly states as to the procedure that has to be adopted for the purpose of questioning the departmental action in levying penal charges. It has also been made clear in the condition as to the limit to which the Department can go for the purpose of assessing the theft of electricity. In no case the Department can go beyond a period of six months, according to this condition. In Condition No. 34, we are able to see that manner of assessment also has been specified. It all these steps are taken by the Department, the condition itself states that the consumer has a remedy by filing an appeal to the appropriate authority within a specified time. Thus, a conjoint reading of this Condition and the purpose for which it is intended, clearly makes out that such a condition is not arbitrary or unreasonable, but within the powers of the Board and, in our opinion, it does not offend any of the Articles of the Constitution. The argument as if the imposition of penal assessment before filing an appeal is harsh and makes the appeal illusory cannot be appreciated. The penal assessment, as we have stated already, is restricted to a limited period. Such an assessment was made after the Department itself was satisfied with regard to the theft of electricity committed by the consumer concerned. Hence, it cannot be said that the appeal provided under Condition No. 34 is an illusory one".

We agree with the above opinion.

43. The principle 'Nemo Judex in Cause Sua' will not apply in this case as the officers have no personal interest with the consumers. As pointed out by learned senior counsel for the Board, they are similar to Income Tax or Sales Tax Officials. There is nothing wrong in their adjudicating the matter especially when the consumers may be represented by an advocate and the formula for making provisional assessment is fixed in the clause itself. As argument has been advanced that the Board has recently deleted the provision enabling the consumer to be represented by a power of attorney agent, it is contended that the consumer is thereby deprived of the assistance of an expert which may be required in technical matters. We do not agree. When the consumer is represented by a lawyer, he can certainly get such assistance as may be needed from a technical expert. It is stated by the Board's learned counsel that the provision was deleted as there was frequent misuse of the same. Whatever may be the reason for deleting the provision, the existing part of the clause enables the consumer to be represented by an advocate. That is sufficient safeguard for the consumer.

44. Learned counsel for the consumer contends that the agreement with the Board is in the standard form and signing of the same by the consumer will not prevent him from questioning it. He places reliance on certain observations in *Pawan Alloys & Casting Pvt. Ltd., Meerut versus U.P. State Electricity Board and Others* (1997) 7 S.C.C. 251. The question in that case arose on the withdrawal of development rebate to the new industries for a period of three years. The court held that the principle of promissory estoppel applied on the facts and circumstances of the case and by entering into the standard agreement containing provision for revision of "rate schedule" from time to time, the consumer had not given up his claim for the rebate for a period of three years as per the promise held out by the Board. That case has no bearing here.

VIII. CONCLUSION

45. In the result, we uphold the judgment and decree of the High Court in C.C.C.A.No. 38 of 1982 and dismiss Civil Appeal No. 2558 of 1988. We allow Civil Appeal Nos. 7139 to 7144 of 1997 and set aside the judgment of the Full Bench of the High Court. The Writ Petitions and Writ Appeals shall be disposed by the High Court in the light of this judgment. The parties will bear their respective costs.