Suresh Jindal Vs. Bses Rajdhani Power Ltd.

Suresh Jindal Vs. Bses Rajdhani Power Ltd.

SooperKanoon Citation : sooperkanoon.com/711489

Court : Delhi

Decided On : Dec-14-2005

Reported in : 126(2006)DLT49

Judge : Pradeep Nandrajog, J.

Acts : Bureau of Indian Standards Act, 1986 - Sections 14; Indian Electricity Act, 1910 - Sections 3 to 11, 12 to 18, 26, 28, 36(2), 37, 40, 49A, 50, 51, 53, 60 and 67 to 69; Indian Electricity (Amendment) Act, 1956; Electricity (Supply) Act, 1948 - Sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 69(1), 72, 73 and 75 to 83; Electricity Act, 2003 - Sections 20, 26, 26(6), 55, 53, 70, 76, 79 and 185(3); Electricity Act, 1887; Electricity Act, 1903; Electricity Laws (Amendment) Act, 1998; Electricity Regulation Commission Act, 1998 - Sections 13, 22, 28 and 29; Electricity Reforms Act; Delhi Electricity Reforms Act, 2000 - Sections 3 to 11, 12, 14, 15, 19 to 27, 63 and 63(3); Companies Act, 1956; Industrial Employment (Standing Orders) Act, 1947; Bureau of Indian Sta

Appeal No. : WP(C) No. 12328/2005

Appellant : Suresh Jindal

Respondent : Bses Rajdhani Power Ltd.

Advocate for Def. : Amit Kapur, Adv. for R-1

Advocate for Pet/Ap. : Laliet Kumar, Adv

Judgement :

Pradeep Nandrajog, J.

1. The nature around us is colourful and diverse. It is but natural that man saw, studied and unravelled nature and its laws. The great physicists Dr. R.P. Feynman gave a wonderful description of what is 'understanding the nature'. Suppose we do not know the rules of chess but are allowed to watch the moves of the players. After some time we make out some of the rules. With the knowledge of these rules we may try to understand why a player played a particular move. However, this may be a very difficult task. Even if we know all the rules of chess, it is not so simple to understand all the implications of a game in a given situation and predict the correct move. Knowing the basic rule is, however, the minimum requirement if any progress is to be made.

2. By partially watching a game we may guess at a wrong rule. The experienced player may make use of a rule for the first time and the observer of the game may get surprised. Because of the new move some of the rules guessed at may prove to be wrong and the observer will frame new rules.

3. Physics goes the same way. Events in nature are like the moves of a chess game. We guess the basic rules according to which the events take place. We may come across new events which do not follow the rules guessed earlier. thereforee, we declare the old rules inapplicable or wrong and discover new rules.

4. Nature operates with its own rules. No one has the authority to frame the rules of nature. We only discover the rules that are operating in nature. A new phenomenon can be observed any day and if existing rules are not able to explain the phenomenon, no one will hesitate to change these rules.

5. Before a rule is accepted as explaining a phenomenon, we try and replicate the phenomenon under controlled conditions in a laboratory. This is experimentation. While experimenting several errors can enter into the result. Errors may be due to faulty equipment, carelessness of the experimenter or random causes. The first two types of errors can be removed after detecting their cause but the random

error would always remain. No specific cause can be assigned to such errors. Random errors are thus inherent in any experimentation.

6. Since life must go on and random errors would always be there in any experimentation; the unknown harmonics would not deter us from accepting technological revolution.

7. Of the many discoveries which have revolutionised the world, discovery of the wheel and electricity find primacy. It is difficult to think of the world without electricity. It has become a basic necessity. The electoral slogan of Roti, Kappa Aur Makan stands replaced by the slogan Bijli, Pani Aur Sadak. Unfortunately, the primacy of electricity in the social life was not backed up with prudent economic policies. The magnitude of the problem can be gauzed from the fact that in the report submitted to the Government of India on 11.5.2001 by the expert group on settlement of the State Electricity Board Dues, para 3 of the report noted that dues of the State Electricity Board have accumulated to Rs. 41,473/- crores. Rehabilitation Scheme proposed was:

(a) 50% of the interest be waived. (It was noted that out of a liability of Rs. 41,473/- crores, interest liability alone was Rs. 15,476/- crores).

(b) Remaining outstanding debt be securities through bonds issued by the respective State Governments.

(c) Reforms be introduced in the power sector pertaining to distribution, metering and revenue realization.

8. It was noted that cash crunch faced by the State Electricity Boards was mainly due to faulty tariff structure and distribution losses. This had a spin off effect. Diminishing revenue resulted in hardly any upgradation in the distribution system which became theft prone and prone to other distribution losses.

9. The Accelerated Power Development and Reform Programme (APDRP) was conceived. Since electricity is a concurrent list subject vide Entry 33 of the List III of the VIIth Schedule to the Constitution of India, at the Chief Ministers Conference held in March,2001 power sector reforms were discussed for ensuring rapid

growth of the economy and for preserving the financial health of State Electricity Boards. APDRP was a result of the decisions taken at the Chief Minsters Conference.

10. Distribution Reforms was identified as the key area to bring about efficiency and improve financial health of the power sector. Inter alia, APDRP envisaged:-

4. Energy Meters on Feeders

Static meters on 11 KV out-going feeders and HT consumers have been contemplated. Though the Chief Ministers conference held in March 2001 decided to complete the implementation of the feeder meters by December 2002, due to various reasons their procurement and installation is yet to be completed. Since these feeders provide the metering at the points of bulk deliveries in the distribution system, these are of paramount importance for carrying out energy audits. Actions for procurement and installation of these are being pursued vigorously. It is also necessary that the meters be provided with on-line communication facility so that reliable, continuous data from all the substations are made available without manual intervention.

5. Energy meters on DTs and Consumers and energy accounting

In many areas it has been planned to install suitable energy meters at distribution transformers to facilitate detailed accounting of energy flows and these have to be planned with suitable data transmission/collection facilities convenient to the utilities. Such meters can also help in keeping track of the distribution transformers loading and thereby reduce their outages apart from providing useful information on consumption patterns for demand side management.

9. Computerisation

Creation of comprehensive, up to date consumer index and system databases on computerized platforms are essential for creation of platforms for efficient commercial and technical operation and management of any distribution system. The APDRP program has laid emphasis on this basic need and actions are on in may areas for creation of such databases. The energy accounting, billing and

revenue management platforms are also planed under the APDRP program for Realizing the objectives outlined above and provide better services to the customers. Implementations for these are under various stages in different areas. In addition provision of computerized automatic data acquisition at the substations are planned. Based on the needs these would be hooked up to suitable Supervisory Control And Data Acquisition Systems.

11. Technical Specification and Standardization

The Expert Committee has also recommended standardization of technical specifications of equipment used in the distribution sector. Specifications are being drawn up for energy efficient and standardized equipments like electronic and static meters, transformers, capacitors, conductors, insulators etc., with the assistance of the Indian Electrical and Equipment Manufacturing Association, the Confederation of Indian Industry and the Bureau of Indian Standards etc. Appropriate Expert Committees have been set up for this purpose. NTPC and PGCIL have also prepared model bidding documents which are available for use by the utilities.

13. Application of Information Technology

Information technology and computer aided tools for revenue increase, outage reduction, monitoring and control, play a vital role in distribution management. It is, thereforee, proposed to have a technology mission for customizing/development of cost effective and relevant solutions for consumer and control point data communications, remote monitoring, operation and control, etc. for the distribution network. Involvement of IT industries in this effort is envisaged. IT applications will be used in such processes in the distribution sector to ensure higher revenues as a result of segregation of T and B losses, and controlling commercial losses, especially for metering, meter reading, billing, collection and outage reduction.

15. Capacity Building within SEBs/Utilities

Even though SEBs have expertise in different fields, strengthening of sub-transmission and distribution network on a scientific basis using computer aided

tools requires an integrated knowledge. Most SEBs, during the regional meetings held in April and then later in June,2001 expressed their inability to take up such work with their own manpower. It was considered necessary to promote capacity building exercise in the SEBs/State Power Utilities to enable SEBs personnel to prepare detailed project reports for each of the districts/circles and implement the project using APDRP funds at a later stage.

- Training the manpower.

- Energy audit and accounting studies.

- Making the SEB officials collect relevant data from each 11 KV feeder in the identified circle.

- Analysis of the data using computer tools to prepare wise computer aided least cost project report.

- Supervision of implementation.

Several training programmes were organized by the training institutions such as Power Management Institute (NTPC), National Power Training Institute, PGCIL etc., and several working level officers from the various SEBs benefited from such programmes. It is planned to further strengthened our efforts in imparting quality training to bring about changes in business perspective crucial to the success of our power reform programmes.

It is proposed to provide extensive training to the staff of SEBs/utilities at all levels so as to enable them to develop bankable project reports covering techno-commercial activities for each circle and manage electricity distribution with a commercial orientation. Capacity building is envisaged as a continuous exercise to ensure that the latest developments are internalized. Distribution reforms require a structural change in the existing set up of the SEBs. In order to enable them to manage distribution on a profit centre approach and to improve their performance on the basis of certain benchmarks, funds under APDRP will be provided only to those State Govts./SEBs which agree to certain precedent conditions through an agreement. The SEBs/State Distribution Utilities will execute a SEB/ Utility-specific

Memorandum of Agreement (MOA) with the Ministry of Power. The Ministry of Power will also monitor implementation of the precedent conditions before releasing funds. The efficiency gains on account of APDRP investments shall be intimated to the regulatory commission to ensure that the benefit and reliefs are passed on to the customer by the private utilities.

11. The Bureau of Indian Standards Act, 1986 was enacted to provide for the establishment of a Bureau (BIS) for harmonious development of the activities of standardization, making and quality certification of goods. The Bureau of Indian Standards (Certification) Rules, 1988 were notified on 6.1.1988.

12. The celebrated scientist Ferrari had invented the electromagnetic disc meters to record electricity consumption. In 1988, electronic meters were unknown in India. bids Regulations did not provide for electronic meters. 3 phase electronic came in vogue in 1992. It would surprise many that State of Bihar was one of the first State to introduce Single Phase Electronic Meters in the year 1996. They came to Delhi in the year 2001. The first Indian Standard of Electronic Meters was notified by bids in the year 1993.

13. Since electronic meters had arrived and were expected to sweep the energy recording sector, in October,1999 bids issued IS 13779:1999 dealing with various types of AC Static Watt-hour Meters Class 1 and 2. This was the first revision to the standard published in the year 1993. Clause 3.1.2 of the Static Watt-hour Meters Class 1 and 2 Specifications (First Revision) defined Static Watt-hour Meter as a meter in which current and voltage act on solid state (electronic) elements to produce an output proportional to Watt-hours.

14. It would be important to note that the Foreword to the First Revision aforesaid noted:

The test levels as specified in the standard are regarded as minimum values to guarantee the proper function of the meter under normal working conditions. For special applications other test levels might be necessary and have to be fixed between the user and the manufacturer.

15. Needless to state, APDRP required the power reforms process to change over to charge efficient and standardized equipments like electronics and static meters and application of information technology and computer aided tools for revenue collection, monitoring, distribution, metering, billing and collection.

Electronic meters had to be brought into the system. The were already knocking at the doors when APDRP was conceived of. bids had rightly moved in the right direction when it notified the First Amendment IS 13779:1999 dealing with AC Static Watt-hour Meters Class 1 and 2.

16. As refinement was perfected in the electronic meters, IS 13779:1999 was amended firstly in October,2003 then in October,2004 and finally in December,2004 Specifications of single phase electronic meters were notified by bids vide IS No. 13779 1EC-1036.

17. Amendment incorporated in December,2004 to existing clause 7.2 of IS 13779:1999 is of importance and relevant to the issue at hand and, thereforee, needs to be noted. Clause 7.2, as notified in 1999, reads as under:

7.2 Connecting Diagrams and Terminal Marking Every meter shall be indelibly marked with a diagram of connections. For Poly phase meters, this diagram shall also show the phase sequence for which the meter is intended. It is permissible to indicate the connection diagram by an identification figure in accordance with relevant standards. If the meter terminals are marked, this marking shall appear on the diagram.

18. Amendment 3 in December,2004, added the following para to existing Clause 7.2:

When a number of meters are connected to a single distribution mains for registering electricity supplied to different consumer loads, separate service lines-phase(s) and neutral, shall be used for each meter. Moreover, interconnection of phases or neutrals of such loads connected to different meters must be avoided. Each independent metered consumer load must be directly connected to distributing mains through its meter in specified phase sequence so as to meet

accuracy requirements of this standard.

19. The meter occupies a very little space in our homes. But the advent of electronic meters in Delhi has stirred a hornest nest. It's accuracy, credibility and if I may say, in the eyes of some, even it's integrity is in doubt. But the electronic meter proclaims: believe me, I'am smarter than my ancestors. (Well, we all believe that we are). Referring to the bids Standards, it says:

1. The chance of me making an error is 0.005% as compared to 1-2% by my ancestors.

2. I am capable of understanding all kind of critical metering.

3. My measurement of KWH (Kilowatt Per Hour) is highly accurate.

4. I have a vast memory and can provide you with the past billing data.

5. I can be read with help of Meter Reading Instrument. This eliminates human errors in recording the transfer of data.

6. I display any of the following problems that may occur at your premises: (i) Earth Leakage, (ii) Problem with neutral and earth wire, (iii) Reverse energy flow, and (iv) Loose wire.

20. A domestic consumer has brought the present action alleging that he is the registered consumer in respect of electricity connection bearing K No. 2540 F 320018 having a sanctioned load of 15 KW. Petitioner states that on 26.4.2003 employees of the respondent came to his premises. Notwithstanding the fact that the existing electro mechanical meter was found in a perfect condition, it was replaced with an electronic meter. It is alleged that as per Rule 57 of the Electric Supply Rules, 1956, the meter was required to be checked before installation and had to conform to the relevant Indian Standard Specification. According to the petitioner ever since the meter was installed he started receiving inflated bills which was proof enough that the meter was faulty.

21. Petitioner claims to have deposited a sum of Rs. 100/- on 29.9.2004 towards meter testing charges. On 3.3.2005 an inspecting team is stated to have come to

check the meter and certified the same as normal.

22. Relying upon the consumption pattern when electro mechanical meter was measuring the current and when the new electronic meter was recording consumption, petitioner states that the average monthly consumption has gone up from 611 units to 1640 units.

23. Prayer made is that respondent be directed to install an electro mechanical meter purchased by the petitioner and that the unilateral act of the respondent in changing the electro mechanical meter and installing an electronic meter be declared illegal. Further, directions are prayed that the respondent be directed to revise the bills which were raised on the basis of the consumption recorded by the electronic meter.

24. Response of the respondent is that the electronic meter installed on 26.4.2003 conforms to the notified standards of BIS. It is stated that officers of Central Power Research Institute (CPRI) checked the accuracy of the electronic meter and found it to be within the permissible error margin i.e. 0.01%. It is stated by the respondent that it is bound to replace, in a phased manner, all existing electro mechanical meters with electronic meters since the electricity regulatory commission which is supervising the new regime has required the respondent to go in for electronic meters.

25. Though pleadings of the parties show a very limited dispute, but probably for the reason large number of petitions were being filed in this court and courts and Tribunals subordinate to this Court alleging excessive consumption recorded by electronic meters, a wider thrust was given to the writ petition evidenced by order dated 29.7.2005 when show cause notice was issued. Government of NCT, Delhi, Delhi Electricity Regulatory Commission (DERC) and Principal Secretary, (Power) were required to respond. Needless to state, response of the said bodies is in support of installing electronic meters.

26. Unfortunately, the petition as drafted had a limited scope. However, counsel for the parties agreed that following issues need to be decided:-

(a) Whether the respondent has a power to replace an existing meter not determined as a faulty meter

(b) If question (a) is answered in favor of the distribution company, whether, while replacing the meter respondent can determine a particular type of meter to be installed for recording electricity supplied/consumed under a connection.

(c) Whether prior to 11th March, 2004 the distribution companies were duly licensed to supply electricity in the respective area of distribution and whether they are vested with the powers of a licensee under the Indian Electricity Act, 1910, the Indian Electricity Rules, 1956 and the Electricity (Supply) Act, 1948.

(d) Whether till regulations are framed under Section 55 of the Electricity Act, 2003 by the authority, the distribution company has authority to determine what would be a correct meter.

27. The aforesaid four questions were framed during arguments vide order dated 29.11.2005.

28. During arguments, learned counsel for the petitioner, in the context of the Indian Electricity Act, 1910 and the Indian Electricity Rules, 1956 took a stand at variance with what was pleaded in the writ petition.

29. Shri Laliet Kumar, learned counsel for the petitioner, inter alia, urged:-

a) Under the Indian Electricity Act, 1910, a consumer had a right to install a meter of his choice. The DERC (Performance Standards - Metering and Billing) Regulations, 2002, vide regulation 17 have curtailed the said right by stipulating that the consumer has a right to procure his own meter either from the certified vendor of the licensee or conforming to licensee's technical specifications. Counsel urged that the DERC (Performance Standards - Metering and Billing) Regulations, 2002 were dependent upon Section 26 of the Indian Electricity Act, 1910 and since the said Act was repealed, the Meter and Billing Regulations ceased to exist.

b) Section 55 of the Electricity Act, 2003 empowered the Central Electricity Authority to make regulations pertaining to meters and thereforee, no other authority, much less the respondent could determine the specifications of a correct meter.

c) The respondent as a transferee under the transfer scheme notified on 20.11.2001 was entitled to exercise the rights and powers of the Delhi Vidyut Board only under the Electricity (Supply) Act, 1948 and not the Indian Electricity Act, 1910.

d) Assuming that the Metering and Billing Regulations, 2002 applied, as long as the respondent was a transferee under the transfer scheme and did not become a licensee it could not exercise any power of the licensee under the Metering and Billing Regulations, 2002, since license was issued in favor of the respondent in March, 2004 it was only thereafter that the respondent could exercise powers of a licensee under the Metering and Billing Regulations, 2002.

e) As long as an existing meter correctly recorded consumption of electrical energy, it could not be replaced. Till the Central Electricity Authority notified regulations pertaining to correct meters, status quo had to be maintained. As per Rule 57 of the Indian Electricity Rules, 1959 correctness of a meter had to be determined in the context of limits of errors stipulated therein. It was not the case of the respondent that the existing electro magnetic meter was faulty.

30. To appreciate the contentions of the learned counsel for the petitioner, it would be necessary to trace out the history of the law relating to electricity in India and in Delhi specifically. The Electricity Act of 1887 and 1903 were amongst the earliest legislations in the world dealing with generation, supply and use of electricity. Though progressive for their time, these laws had been enacted in the context of the initial phase of limited commercial use of electrical energy. The two enactments dealt with this limited aspect. Also, at the time of their enactment, it was recognized that they were tentative pieces of legislation and would need to be amended and evolved over time.

31. The Indian Electricity Act, 1910 was enacted in light of the fast growing expansion of electrical industry and the emergence of its value change, as also the practical experience of electro-technical and commercial issues. It created the basic framework for electric supply industry in India. Some of the salient features of the 1910 Act were:-

a) Envisaging the sectors growth, the Act provided for grant of licenses for supply, conveyance and transmission of electrical energy,

b) The framework for the relationship between the licensee and the consumer, and finally;

c) the establishment of the office of the Electrical Inspector for undertaking functions assigned including resolving disputes between the licensee and the consumer.

32. Came independence. With focus on national reconstruction and social justice, the Government of India decided that time had come for rationalising the production and supply of electricity and for taking measures to strengthen the state/public ownership in the field of electricity. The Electricity (Supply) Act, 1948 was promulgated. State Electricity Boards were established with the object of establishing, operating and maintaining generation stations, sub- stations and transmission lines. A Central Electricity Authority was created. Generating companies were created.

33. From time to time, the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 were amended. Aim was to bring in private participation. The Electricity Laws (Amendment) Act, 1998 introduced sweeping reforms.

34. The Electricity Regulation Commission Act, 1998 was promulgated. The principal object of this Act was to establish Central and State Regulatory Commissions to regulate the power sector in terms of Sections 13, 28 and 29 of the said Act.

35. The Delhi Electricity Regulatory Commission (DERC) was constituted under the Electricity Regulatory Commission Act, 1998.

36. As noted above, by 1999 the State Electricity Boards were in a financial mess. A total re-structuring of the electricity industry, right from generation to transmission to distribution was envisaged as the solution to the mess. Various State Governments enacted Electricity Reforms Acts. In the Union Territory of Delhi, the Delhi Electricity Reforms Act, 2000 was promulgated on 23.11.2000.

37. Vide Section 3 of the Delhi Electricity Reforms Act, 2000 the Delhi Electricity Regulatory Commission (DERC) was to exercise the powers and was obliged to perform the functions assigned to it under the Act.

38. Section 11 of the Act empowered the Commission to discharge various functions which, inter alia, vide Clause (l) to Sub-section (1) of Section 11 empowered it to issue licenses for transmission, bulk supply, distribution or supply of electricity including the conditions of the license.

39. Providing for re-organization of electricity industry in the Union Territory of Delhi, Sections 14 and 15 of the Delhi Electricity Reform Act, 2000 stipulated as under:-

14. Incorporation of companies for the purpose of generation, transmission or distribution of electricity:

1. The Government may, as soon as may be after the commencement of this Act, cause one or more companies to be incorporated and set up under the provisions of the Companies Act, 1956 for the purpose of generation, transmission or distribution of electricity, including companies engaged in more than one of the said activities in the National Capital Territory of Delhi and may transfer the existing generating stations or the transmission system or distribution system, or any part of the transmission system or distribution system to such company or companies.

2. . . . . .

3. The companies incorporated and set up under Sub-section (1) shall undertake the functions specified in this section and such other functions as may be assigned to them by the Government.

4. . . . . .

5. . . . . .

6. . . . . .

7. . . . . .

15. Reorganization of Delhi Vidyut Board and transfer of properties, functions and duties thereof:-

1. With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act is published or such further date as may be specified by the Government (hereinafter referred to as the effective date) any property, interest in property rights and liabilities which immediately before the effective date belonged to the Board shall vest in the Government.

2. The Government may transfer such property, interest in property, rights and liabilities to any company or companies established under Section 14 for the purpose in accordance with the transfer scheme prepared thereforee.

3. Such of the right and power to be exercised by the Board under the Electricity (Supply) Act, 1948 as the Government may, by notification in the Official Gazette, specify, shall be exercisable by a company or companies established as the case may be under Section 14, for the purpose of discharge of the functions and duties with which it is entrusted.

4. . . . . .

5. . . . . .

6. . . . . .

7. . . . . .

8. . . . . .

9. . . . . .

10. The exercise by a licensee of any of Board's rights and powers may be made on such conditions as shall be specified in the transfer scheme including a condition that such rights and powers shall be exercised by the licensee only with the approval of the Commission/Government.

40. Sections 19 to 27 of the Delhi Electricity Reforms Act, 2000 deal with licencing of transmission and supply. Section 19 prohibits transmission of electricity in Delhi, save and except, under a license obtained from the DERC. Section 20 deals with the power of DERC to grant a license. Sub-section (4) and (6) of Section 20 are relevant.

41. Under Sub-section(4) of Section 20, while granting a license, DERC is empowered to make it a condition of the license that the licensee would comply with the requirements of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and the rules framed under the two Acts. Further, the license may contain that the licensee would discharge the functions and obligations of Delhi Vidyut Board under the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948. Sub-section (6) of Section 20 reads as under:

(6) The provisions contained in the schedule to the Indian Electricity Act, 1910 (Central Act 9 of 1910 shall be deemed to be incorporated with, and to form part of, very supply license granted under this part save in so far as they are expressly varied or excepted by the supply license and shall, subject to any such additions, variations or exceptions which the Commission is empowered to make having regard to the purpose of this Act, apply to the undertaking authorized by the license in relation to its activities in the National Capital Territory of Delhi:

Provided that where a supply license is granted by the Commission for the supply of energy to other licensees for distribution by them, then in so far as such license relates to such supply, the provisions of Clauses IV, V, VI, VII, VIII and XII of the said Schedule shall not be deemed to be incorporated within the supply license.

42. Section 63 of the Delhi Electricity Reform Act, 2000 reads as under:-

63. Effect of the Act on the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.-

(1) Except as provided in Section 63 of this Act, the provisions of this Act, notwithstanding that the same are inconsistent with or contrary to the provisions of the Indian Electricity Act, 1910 (Central Act 9 of 1910) or the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) shall prevail in the manner and to the extent provided in Sub-section (3)

(2) Subject to Sub-section (1) in respect of all matters in the Indian Electricity Act, 1910 (Central Act 9 of 1910) and the Electricity (Supply) Act, 1948. (Central Act 54 of 1948) with which the Delhi Vidyut Board has been concerned or dealing with, upon the constitution of the Commission the functions of the Board shall be discharged by the Commission and the companies established under Section 14:

Provided that -

(a) the Government shall be entitled to issue all policy directives and undertake overall planning and coordination as specified in Section 12 of this Act and to this extent the powers and functions of the Delhi Vidyut Board as per the provisions of the Indian Electricity Act, 1910 (Central Act 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) or rules there under shall vest in the Govt. and the Government shall coordinate and deal with the Central Government and the Central Electricity Authority.

(b) in respect of such matters as the Commission directs in terms of a general or special order, or in the regulations or in the license, as the case may be, the generating company or companies, the licensees or other body corporate as may be designated by the Commission shall discharge the functions of the Board under the Indian Electricity Act, 1910 (Central Act 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) to the extent directed by the Commission or specified in licenses.

(3) Subject to Sub-section (1) and Sub-section (2) of this section, upon the establishment of the Commission, the provisions of the Indian Electricity Act, 1910

(Central Act 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) shall, in sofar as the National Capital Territory of Delhi is concerned, shall be read subject to the following modifications and reservations, namely:

THE INDIAN ELECTRICITY Act, 1910

(i) All references to State Electricity Board in the Indian Electricity Act, 1910 (Central Act 9 of 1910) insofar as the National Capital Territory of Delhi is concerned shall be read as references to the Delhi Electricity Regulatory Commission or the companies established under Section 14 or other licensees or whether it relates to general policy matters, to the Government.

(ii) In respect of matters provided in Sections 3 to 11, 28, 36(2), 49-A, 50 and 51 of the Indian Electricity Act, 1910 (Central Act of 1910) to the extent this Act has made specific provisions, the provisions of the Indian Electricity Act, 1910 (Central Act 9 of 1910) shall not apply in the National Capital Territory of Delhi.

(iii) The provisions of all other sections of the Indian Electricity Act, 1910 (Central Act 9 of 1910) shall apply except that:-

(a) the term 'license' 'licensee', 'license holder' shall have the meanings as defined under this Act and the licenses shall be construed as having been issued under the is Act;

(b) the reference to the sections of the Indian Electricity Act, 1910 (Central Act 9 of 1910) and Electricity (Supply) Act, 1948 (Central Act 54 of 1948) in the provisions of the Indian Electricity Act, 1910 shall be taken as reference to the corresponding provisions of this Act to the extent modified by this Act;

(c) the reference to arbitration in these provisions except where it is by the Central Electricity Authority or the Central Electricity Regulatory Commission shall be taken as reference to the proceedings under Section 40 of this Act and the arbitration procedure prescribed under the Indian Electricity Act, 1910 (Central Act 9 of 1910) shall not apply.

(iv) The Schedules to the Indian Electricity Act, 1910 (Central Act 9 of 1910) shall be applicable only with reference to the provisions in this Act wherein the applications of the Schedules are specified and not otherwise.

THE ELECTRICITY (SUPPLY) Act, 1948

(v) All references to State Electricity Board in the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) insofar as the National Capital Territory of Delhi is concerned shall be read as references to the Delhi Electricity Regulatory Commission or the companies established under Section 14 or other licensees or where it relates to general policy matters, to the Government.

(vi) In respect of matters provided in Sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 72 and 75 to 83 of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) to the extent this Act has made specific provisions, the provisions of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) shall not apply in the National Capital Territory of Delhi.

(vii) The provisions of all other sections of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948) shall apply except that-

(a) The terms 'license' 'licensee', 'license holder' shall have the meanings as defined under this Act and the licenses shall be construed as having been issued under this Act;

(b) The references to the sections of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 shall be taken as reference to the corresponding provisions of this Act to the extent modified by this Act;

(c) The reference to arbitration in these provisions except where it is by the Central Electricity Authority shall be taken as reference to the proceedings under Section 40 of this Act and the arbitration procedure prescribed under the Electricity (Supply) Act, 1948 shall not apply.

(vii) The provisions of Sections 72 and 73 of the Electricity (Supply) Act, 1948 shall be restricted to generating companies and references to the State Electricity Board

in these sections shall stand omitted.

43. A perusal of Section 14 of the Delhi Electricity Reforms Act, 2000 shows that the Government was empowered to incorporate companies for the purposes of, inter alia, distributing electricity in the National Capital Territory of Delhi. Section 15 shows that with effect from the date of the transfer scheme, all rights and liabilities of the Delhi Vidyut Board shall vest in the Government and the Government was empowered to transfer any right or liability in the company which may be incorporated. Vide Sub-section (6) of Section 20, provisions contained in the Schedule to the Indian Electricity Act, 1910 were to be deemed to be incorporated in the license of the new company. Vide Section 63(3)(iii)(a) the provision of all sections other than those referred to in Section 63(3)(ii) (to the extent the Act of 2000 made provisions), were continued to be in force and the license already granted was to be construed as having been issued under the new law. Further, by virtue of Section 63(3)(v) all references to the State Electricity Board under the Electricity (Supply) Act, 1948 were to be construed as referring to DERC or the companies established under Section 14.

44. It is thus obvious that as and when a company was incorporated to distribute electricity in Delhi, the rights and obligations of a licensee under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 were automatically vested in the supply company.

45. Section 26 of the Electricity (Supply) Act, 1948 reads as under:

26. Board to have powers and obligations of licensee under Act 9 of 1910.-

Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and this Act shall be deemed to be the license of the Board for the purposes of that Act:

Provided that nothing in Sections 3 to 11, Sub-sections (2) and (3) of Section 21 and Section 22, Sub-section (2) of Section 22A and Sections 23 and 27 of that Act or in Clauses 1 to V, Clause IX to XII of the Schedule to that Act relating to the

dues and obligations of a licensee shall apply to the Board:

Provided further that the provisions of clause VI of the Schedule to that 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 has commenced.

46. The Board constituted under the Supply Act had all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and the supply Act was deemed to be the license of the Board.

47. In Delhi, the Delhi Vidyut Board was existing when the Delhi Electricity Reforms Act, 2000 was enacted. By virtue of Section 26 of the Electricity (Supply) Act, 1948, the Act itself was deemed to be the license of the Board. This license would automatically get transferred to the company incorporated by the Government under Section 14 of the Delhi Electricity Reforms Act, 2000 as per transfer scheme by virtue of Section 15 of the said Act.

48. To give effect to the Delhi Electricity Reforms Act, 2000, the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 were notified on 20.11.2001. Rule 2(d) defined date of transfer as under:-

2(d) Date of transfer means the date to be notified by the Government as the effective date of transfer to the successor entities in accordance with these rules of such of the undertakings, assets, liabilities, proceedings or personnel as may be specified in the notification published in the Official Gazette.

49. DISCOM 1, 2 and 3 were defined vide Rule 2(e), (f) and (g) as under:-

2(e) DISCOM 1 means the Central-East Delhi Electricity Distribution Company Limited, a company incorporated under the companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part 1 of Schedule H.

2(f) DISCOM 2 means the South-West Delhi Electricity Distribution Company Limited, a company incorporated under the companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of

electricity in the area as specified in Part II of Schedule H.

2(g) DISCOM 3 means the North, North-West Delhi Electricity Distribution Company Limited, a company incorporated under the companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part III of Schedule H.

50. Rule 5(1) and (2), dealing with, rights on transfer taking place and vesting, specified as under:-

5. Transfer of Undertaking by the Government.-(1) Subject to the terms and conditions contained in these rules-

(a) the rights and interests in the Pragati Power Project forming part of Schedule A, shall stand transferred to, and vest in, the PPCL, on and from the date of the transfer appointed for the purpose.

(b) the undertaking forming part of the Generation Undertaking as set out in Schedule B, shall stand transferred to, and vest in, the GENCO, on and from the date of transfer appointed for the purpose.

(c) the undertaking forming part of the Transmission Undertaking as set out in Schedule C, shall stand transferred to, and vest in, the TRANSCO, on and from the date of transfer appointed for the purpose.

(d) the undertaking forming part of the Distribution Undertaking as set out in Schedule D, shall stand transferred to, and vest in, the DISCOM 1, on and from the date of transfer appointed for the purpose.

(e) the undertaking forming part of the Distribution Undertaking as set out in Schedule E, shall stand transferred to, and vest in, the DISCOM 2, on and from the date of transfer appointed for the purpose.

(f) the undertaking forming part of the Distribution Undertaking as set out in Schedule F, shall stand transferred to, and vest in, the DISCOM 3, on and from the date of transfer appointed for the purpose.

(g) The assets and liabilities as set out in Schedule G, shall vest in the holding company, on and from the date of transfer appointed for the purpose.

(2) On such transfer and vesting of the undertakings in terms of sub-rule(1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature, relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favor of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board. 51. Rule 10(2) reads as under:

10. Rights and powers of Transferees.

(1) . . . . . .

(2) Within 60 days of the effective date of transfer, the DISCOMS shall apply to the Commission for the grant of license under the Act to undertake the business of distribution and retail supply of electricity in the respective areas of supply as specified in Schedule 'H':

Provided, however, that on and from the effective date of the transfer and till the grant of license by the Commission, the DISCOMS shall be entitled to exercise the rights and powers exercisable by the Board under the Electricity (Supply) Act, 1948 (54 of 1948) and undertake the business of distribution and retail supply of electricity in the respective areas of supply as specified in Schedule 'H', in the same manner as the Board was entitled to, prior to the effective date of the transfer.

52. Legal position, thereforee, is that as per the Delhi Electricity Reforms Act, 2000, Delhi Vidyut Board was to be firstly taken over by the Government and thereafter was to be split into generating, transmission and distribution companies. Three distribution companies were envisaged. They were to supply electricity to consumers in their respective areas. Delhi Vidyut Board was the licensee under

the Indian Electricity Act, 1910 and the Electricity (Supplly) Act, 1948. From the date of transfer, the distribution companies were empowered to exercise all rights and powers of Delhi Vidyut Board. Within 60 days of the date of transfer, the distribution companies had to apply to DERC for a formal license but till such time the license was granted, the distribution companies were empowered to act in terms of the powers of the Delhi Vidyut Board as a licensee.

53. Delhi Vidyut Board was a multifaceted entity. It could generate electricity, it could transmit electricity, it could also distribute electricity. It also had statutory powers to regulate business. The new regime envisaged by the Delhi Electricity Reforms Act, 2000 trifurcated these functions. Statutory power to regulate business already stood diluted by the Electricity Regulation Commission Act, 1998 under which Delhi Electricity Regulatory Commission was constituted. Since the 3 DISCOMs had to take over the functions of Delhi Vidyut Board, pertaining to distribution, it was but natural that since obligations of a licensee were transferred to these companies they must also get the powers of the licensee. Rule 10(2) of Delhi Electricity Reform (Transfer Scheme) Rules, 2001 was the bridging provision. It vested the distribution companies with DVB's powers as a licensee till DERC gave a license to them; of course that within 60 days of the transfer the new companies had to apply for a new license.

54. Three distribution companies formed were North Delhi Power Ltd. (NDPL), BSES Yamuna Power Ltd. and BSES Rajdhani Power Ltd. 1.7.2002 was the notified date of transfer. With effect from 1.7.2002 the 3 took charge as licensees in their respective areas.

55. thereforee, w.e.f. 1.7.2002, the respondent took over the rights and obligations of Delhi Vidyut Board as a licensee in respect of supply/distribution of electricity to the consumers in the area of its jurisdiction. The deemed license of the Delhi Vidyut Board as a licensee as per Section 26 of the Electricity (Supply) Act, 1948 became the license of the respondent. Needless to state, the licensed area was the area assigned to the respondent. In terms of Section 26 of the Electricity (Supply) Act, 1948 read with Rule 10(2) of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, powers and obligations of the licensee (DVB) under the

Indian Electricity Act, 1910 became the powers and obligations of the respondent. Further, as per the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 read with Section 14 and 15 of Delhi Electricity Reforms Act, 2000, respondent became the successor- in-interest of Delhi Vidyut Board in respect of the license held by Delhi Vidyut Board in relation to the areas earmarked for the respondent within which it had to supply electricity. Section 63 of the Delhi Electricity Reforms Act, 2000 clearly indicated that the provisions of Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 save in so far they were not inconsistent with the provisions of Delhi Electricity Reforms Act, 2000 would continue to prevail in the manner and to the extent provided in Sub-section (3) of Section 63. Vide Sub-section (3) of Section 63, reference to State Electricity Board in the Indian Electricity Act, 1910 was to be read as referring to the DERC or distribution companies established under Section 14 as the case may be. Further, Section 3 to 11, 28, 36(ii), 49A, 50 and 51 of the Indian Electricity Act, 1910 became inapplicable in the National Territory of Delhi. Thus, as a licensee, respondent could not exercise powers under the said sections of the Indian Electricity Act, 1910. Further, license issued under the Indian Electricity Act, 1910 were deemed to be license issued under the Delhi Electricity Reforms Act, 2000. Further, Sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 72 and 75 to 83 of the Electricity (Supply) Act, 1948 were not to apply in Delhi to the extent the Delhi Electricity Reforms Act, 2000 made specific provisions. All other sections of the Electricity (Supply) Act, 1948 were to apply.

56. Section 26 of the Indian Electricity Act, 1910 continued to be applicable under the Delhi Electricity Reforms Act, 2000. Said section deals with the meters. Sub-section (1) and (7) of Section 26 of the Indian Electricity Act, 1910 are relevant. They read as under:-

26. Meters.- (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase.2. . . . . .

3. . . . . .

4. . . . . .

5. . . . . .

6. . . . . .

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of Sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in Sub-section (1):

Provided also that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of Sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in Sub-section (1).

57. Section 26 of the Indian Electricity Act, 1910 and Section 49 of the Electricity (Supply) Act, 1948 continue to remain in force notwithstanding the promulgation of the Delhi Electricity Reforms Act, 2000. Under Section 49 of the Electricity (Suply) Act, 1948, State Electricity Boards were empowered to frame tariff and terms and conditions for the supply of electricity. Conditions of Supply were framed in Delhi

when the supply of electricity was with the Delhi Electricity Supply Undertaking (DESU), a wing of Municipal Corporation of Delhi. These Conditions of supply were adopted by Delhi Vidyut Board. The Conditions of Supply were in force when the transfer scheme came into operation on 1.7.2002. Condition 22 of the Conditions of Service reads as under:

22. Meters and Meter Reading:

(a) All meters indicators and special apparatus required for metering the supply shall be installed, sealed and maintained by the Undertaking on the premises of the consumer and rent shall be charged in accordance with the scale of charges attached hereto (Annexure 'G').

(b) The consumer may provide such metering equipment instead of renting the same provided the same has been approved by the Engineer of the Undertaking and is strictly in accordance with his specification. Supply will not be commenced until the Undertaking's Engineer is satisfied regarding the accuracy and specification of the metering equipment. Before the consumer's meter can be approved it will be necessary to test it in the meter testing laboratory maintained by the Undertaking for the purpose for which the consumer shall pay the prescribed testing fee.

58. Hon'ble Supreme Court, in the decision reported as 1994 Suppl. (2) SCC 125, PSEB v. Bassi Cold Storage Kharar held that Conditions of Supply are akin to subordinate legislation. In the decision reported in : AIR 1996 SC2214 , Bihar State Electricity Board v. Parmeshwar Kumar Agarwala, in para 16, it was held:-

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 modal conditions can be said to be akin to the model

Standing Orders prescribed by Industrial Employment (Standing Orders) Act, 1947, which, when certified, become part of the statutory terms and conditions of service between the employer and employee and they govern the relationship between the parties, as held in, Workmen v. Firestone Tyre and Rubber Co. of India (P) Ltd., : (1973)ILLJ278SC . We are inclined to think that similar is the effect of terms and conditions, on which a State Board supplies energy to the consumers.

59. In the decision reported as : [1998]2SCR620 , Hyderabad Vanaspati Ltd. v. A.P. State Electricity Board their Lordships of the Supreme Court held that Section 49 of the Electricity (Supply) Act, 1948 empowered the State Electricity Boards to prescribe such terms and conditions as it thinks fit for supply to any person other than a licensee. In para 22, their Lordships held that in performing its statutory duty of supplying energy, the Board exercises statutory powers while fixing terms and conditions under which it would supply electricity. Conditions of supply were held to be statutory in character.

60. Section 60 of the Indian Electricity Act, 1910 obliges the licensee to ascertain electrical energy supply to a consumer by means of a correct meter. Under Sub-section (7) of Section 26, the licensee is empowered to place upon the premises of the consumer, maximum demand indicator or other apparatus as the licensee may think fit for the purposes of ascertaining or regulating either the amount of energy supplied or the number of hours during which the supply is given or any other quantity or time connected with the supply. Condition 22 of the Conditions of Supply adopted by Delhi Vidyut Board empowered the licensee to require a consumer to have metering equipment strictly in accordance with its specifications. Rule 57 of the Indian Electricity Act, 1956 determines the standards of a correct meter.

61. On the issue of power of the licensee to replace meters, considering the scope of Section 26 of the Indian Electricity Act, 1910, their Lordships of the Supreme Court in the decision reported as : AIR 1997 SC2793 , Belwal Spinning Mills Ltd. v. UP State Electricity Board, in para 37, held as under:-

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

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

62. Legislative provisions have to be considered and interpreted with the march of time to keep pace with time. The new regime for distribution of electricity required comprehensive consumer data and system data pace. This was to be on computerized platforms. As noted in para 10 above, APDRP required information technology and computed audited bills for revenue increase, monitoring, distribution and management of electricity. Para 13 of APDRP specifically noted that commercial loss have to be controlled especially for metering, meter reading,

billing and collection etc. Electronic meters had entered the territories of India in the year 1992. Para 9 of APDRP required switching over to electronic meters. As noted in para 12 above, first Indian standard of electronic meters was notified by Bureau of Indian Standards in the year 1993. Standards were revised in 1999, October,2003 and October,2004 Specifications of the electronic meters were already regulated by a Statute, namely, Bureau of Indian Standards Act, 1996. Pertaining to single phase static Watt-hours meters, standards were notified by Bureau of Indian Standards vide IS No. 13779, IEC-1036.

63. Advent of technology coupled with the policy decision taken by the Government as reflected in APDRP required shifting over to a computerized regime. Electronic meters had a memory system. They could be read directly through instruments, data down loaded and fed directly to a computer. This is consumer friendly as it rules out manual errors. DERC (Performance, Standards and Metering and Billing) Regulations, 2002 were notified soon after the the transfer scheme came into effect. These regulations were notified on 19.8.2002. Regulation 17(i) and (ii) specified as under:

17. General.-

(i) No installation, other than those, which are specifically exempted, shall be serviced without a meter and all the requirements as laid down in Section 26 of the Electricity Act shall be complied with.

(ii) In case of new connection/ replacement of meter, the consumer, in accordance with Section 26 of the Electricity Act, may himself procure the meter either from the vendors certified by the licensee, or conforming to licensee's technical specifications. The licensee shall calibrate such meter at consumer's cost and seal the meter. Alternatively, consumer may choose to pay the full cost of the meter provided by the licensee. No meter rent shall be chargeable in such cases.

64. A learned Single Judge of Karnataka High Court in the decision reported as AIR 1988 Karnataka 369, Peenya Industries Association v. Karnataka State Electricity Board while dealing with Section 26 of the Indian Electricity Act, 1910 and Regulation 31.04 of Karnataka State Electricity Board (Supply) Regulations

held:-

4. . . . . .I have no difficulty in rejecting the contention urged on behalf of the petitioner that the Board does not have the power to replace the meter once provided to the consumer by and more sophisticated equipment which in the opinion of the Board is better than what was installed earlier. Obligation to provide and maintain a correct meter, in my opinion, carry with it. Right to change the metering equipment also, not only in situation where the earlier installed meter is found to be working unsatisfactorily but also where the Board considers it necessary to so do with a view to improving the quality of equipment and making the same more dependable and tampered proof.

65. It would not be out of place to record over here an additional fact. In June, 2003 Delhi Electricity Regulatory Commission issued an order named Order of Annual Revenue Requirement for July 2002 to March,2003 and financial year 2003-04 and determination of retail supply tariff for BSES Rajdhani Power Limited. As stated at the Bar, similar orders were issued for the other two distribution companies in the National Capital Territory of Delhi. Vide para 7.2.5 of the said order, dealing with metering it was noted by the Commission that metering is another area of concern. In view of high level of AT and C losses in the DISCOMs areas. The order noted that 3 phase LT meters were proposed to be replaced by electronic meters by December, 2003. Vide para 7.2.6 dealing with billing, the Commission directed as under:-

7.2.6 Billing

On the same lines as metering, the Commission opines that billing efficiently is also very crucial to reduce the D and B loss in the system. It is essential to have a computerized billing system to tract the consumption pattern, which will throw up cases where the billing pattern has not been followed.

66. Vide para 4.9.2.14 of the order, the Commission directed as under:- The Commission, hereby, directs the petitioner to complete installation of electronic meters for all the consumers, except those up to 10 KW being supplied on single phase, of SIP/NDLT categories by 31st March, 2004 so that kwh (or kWh and

kVARh) system of billing energy could be appropriately considered for introduction next year. However, petitioner shall not replace the electronic meters provided by erstwhile DVB unless there are compelling reasons to do so.

67. The respondent thereforee, was under an additional directive of Delhi Electricity Regulatory Commission to change over to electronic meters where supply was above 10KW.

68. On 17.3.2003, in exercise of powers conferred under Section 14 of the Bureau of Indian Standards Act, 1986, in consultation with the Bureau of Indian Standards, Central Government notified The Electronic Wires, Cables, Appliances And Protection Devices And Accessories (Quality Control) Order 2003. The said order vide Clause 3, specified as under:-

3. Prohibition regarding manufacture, storage, sale and distribution etc.-(1) No person shall by himself or through any person on his behalf manufacture or store for sale, sell or distribute any electrical wires, cables, appliances, protection devices and accessories which do not conform to the Specified Standards and do not bear Standard Mark of the Bureau on obtaining certification marks license:

Provided that nothing in this Order shall apply in relation to export of electrical wires, cables, appliances, protection devices and accessories required for export, which conform to any specification required by the foreign buyer and such specification shall not in any case be less than the Specified Standard.(2) The Sub-standard or defective electrical wires, cables, appliances, protection devices and accessories or raw material or components, which do not conform to the Specified Standard shall be deformed by the manufacturer beyond use and disposed of as scrap within three months.

69. Entries at Seriall No. 22-24 of the schedule to the order read as under:-

22. AC Watt-hour meters, class 0.5, 1 and 2 (KWH) -IS:13010

23. AC static watt-hour meters, class 1 and 2 (KWH) -IS:13779

24. AC static transformer operated watt-hour and VAR-hour meters, class 0.2 S and 0.5 S -IS:14697

70. The requirement to shift over to electronic meters under the new regime coupled with the power of the licensee to opt for an electronic meter is obviously not unregulated by law. bids Standards which are statutorily notified under the bids Act, 1986 circumscribe the power of the licensee to opt for a particular electronic meter. It is the case of the respondent that the meters procured by it through vendors conform to ISI specifications. Material has been filed by the respondent which shows that the vendors from whom it is procuring electronic meters have ISI certification. Learned counsel for the petitioner could not point out any material to the Court to show that the electronic meters being installed by the respondent do not conform to ISI specifications.

71. Grievance of learned Counsel for the petitioner was in respect of additional features in the meters, which additional features were at the asking of the respondent and other licensees. The submission is neither here nor there for the reason, while notifying the first revision to the bids standards notified in the year 1999, in the foreword, bids has recorded as under:-

FOREWORD

This Indian Standard (First Revision) was adopted by the Bureau of Indian Standards, after the draft finalized by the Equipment for Electrical Measurement and Load Control Sectional Committee had been approved by the Electro-technical Division Council.

This Indian Standard covers the general requirements and tests for various types of ac static Watt-hour meters of class 1 and 2 generally in line with the requirements for induction meters. However, the general requirements and tests applicable to transformer operated static Watt-hour meters of class 0.2S and 0.5S with performance levels attainable in such meters have been covered in a separate Indian Standard.

This standard was first published in 1993. This revision has been brought out to update some requirements and to have parity between two standards.

The test levels as specified in this standard are regarded as minimum values to guarantee the proper function of the meter under normal working conditions. For special application other test levels might be necessary and have to be fixed between the user and the manufacturer.

72. It is apparent that the levels specified in bids Standards have to be regarded as minimum values to guarantee the proper functioning of the meter under normal working conditions and for special applications other tests might be necessary which have to be fixed between the user and the manufacturer. Thus, bids standards have to be treated as the minimum essential.

73. It would not be out of place to list out the advantages of electronic meters in comparison with electro mechanical meters. The chart as noted under, formulated by APDRP Committee of Ministry of Power, brings out the superiority of electronic meters:-

table 1

74. As stated at the Bar, the formal license which was applied by the respondent was granted by Delhi Electricity Regulatory Commission on 11.3.2004 However, it may be noted that the respondent applied for the requisite license under Rule 10(2) of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 within 60 days of 1.7.2002, the notified date of transfer.

75. In light of the legal position above the answers to question a, b and c are as under:-

a. That the respondent has a power to replace an existing meter not determined as a faulty meter.

b. Subject to adhering to the bids specifications and the specifications notified under Electrical Wires, Cables, Appliances And Protective Devices And Accessories (Quality Control) Order, 2003, the respondent can determine a

particular type of meter to be installed for recording electricity supplied/consumed under a connection. (Note: On facts I may note that the electronic meters being installed by the respondent are manufactured by vendors who have ISI certification qua the meters supplied).

c. Notwithstanding that the formal license was issued to the respondent on 11.3.2004, the respondent was duly licensed to supply electricity in the area of its distribution and was vested with the powers of the licensee under the Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and the rules framed there under, subject to the curtailment of the said powers under Section 63 of the Delhi Electricity Reform Act, 2000. However, power under Section 26 of the Indian Electricity Act, 1910 and Section 49 of the Electricity (Supply) Act, 1948 was available with the respondent as also the power under the conditions of supply which were notified when Delhi Vidyut Board was in existence.

76. That leave only the 4th question to be answered. That takes me to another momentous event in the growth of electricity laws in Delhi.

77. Since the subject electricity is under the concurrent list, initial reforms in the regime of generation, supply and distribution of electrical energy envisaged every State to frame its own laws. Needless to state, as far as the National Capital Territory of Delhi was concerned, the Delhi Electricity Reforms Act, 2000 was promulgated. Salient features of the Act, as noted above, show that it was a complete code. The Act retained the continued applicability of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 in Delhi, subject to the specific exclusion of certain provisions as being not applicable to the licensees. Needless to state, the Electricity Regulations Commission Act, 1998 had already been promulgated by the Union Government with the principal object of establishing State and Central Regulatory Commissions. Delhi Electricity Regulatory Commission (DERC) was constituted under the Electricity Regulatory Commission Act, 1998. Many powers of the Board were vested in the said independent Commission. The Commission was to act as a watchdog and as a supervisory authority over the licensees. Power to frame tariff was withdrawn from the licensees and was vested in the Commission. The Commission was required to

carry out an audit of the work and the performance of the licensees and in the context of the existing distribution system inherited by them, in a phased manner, the Commission was to ensure that the licensees upgraded the distribution system and additionally took measures to prevent distribution losses, whether by way of theft, under-billing or faulty equipment. Taking into account the money which had to be pumped into the system by the licensees, reasonable time had to be given to the licensees to improve the system and considering all the parameters aforesaid, tariff structure was to be notified by the Commission.

78. As noted above, APDRP required electronic meters to be installed in the Sub-stations from where electricity was supplied by the transmission companies to the distribution companies. From the transformers installed by the distribution companies from where electricity was distributed to the consumers, at the distribution point itself electronic meters had to be installed. APDRP has an inherent feature of energy audit. This audit would be meaningful only where each and every consumer has an electronic meter installed. Once this is achieved, energy audit would be a simple process. Thefts by consumers can easily be detected in light of the reading of the electronic meter at the sub- station vis-a-vis the sum total of the reading recorded by the electronic meters installed at the premises of every consumer. Theft prone areas could be determined. I am given to understand that in certain areas of Delhi extent of theft of electricity was having alarming proportions of up to 30 to 35%. It would not be out of context for me to note, as the roaster of electricity has been assigned to me, that numerous cases have been brought to my notice by the DISCOMs where, while conducting checks at the premises of consumers even under police protection, the enforcement team had to retreat due to lawlessness created by the residents of certain localities where ultimately huge theft of electricity were determined. In some cases direct theft of electricity were detected, after bye-passing the meter, and connected loads up to 250 KWs were found. Needless to state, once the regime of electronic meters is fully in place it would ultimately help the case of the honest consumer.

79. The State Governments and the Central Government had a re-look at the process of reforms initiated in the year 1999. It was felt advisable to have a uniform national policy on the subject of electricity. The Electricity Act, 2003 was

enacted. It came into force on 10.6.2003. The Central Regulatory Commission was constituted under Section 76 of Electricity Act 2003. The functions of the said Commission were specified in Section 79. The said Commission, as would be evident from Section 79, was mainly concerned with the tariff payable to the generating companies and to regulate inter State transmission of electricity. Another authority, called the Central Electricity Authority was constituted under Section 70 of the Electricity Act 2003. The said Authority was empowered to perform the functions and duties as may be prescribed or directed by the Central Government on the issues set out in Clauses (a) to (o) of Section 73. Inter alia, the said Authority constituted under Section 73 was empowered, if directed by the Central Government, to specify the conditions for installation of meters for transmission and supply of electricity. Section 55 of the Electricity Act, 2003 reads as under:-

55. Use, etc., of meters.-(1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:

Provided that the licensee may require the consumer to give him security for the price of two years and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or the regulations made under Sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be

made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.

80. Authority referred to in Section 55 is the Central Electricity Authority.

81. A perusal of Section 55 of the Electricity Act, 2003 shows that on the expiry of two years from the appointed date, no licensee could supply electricity except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority.

82. Learned Counsel for the parties informed me at the Bar that the appointed date under the Electricity Act, 2003 is 10.6.2003.

83. Since Section 55 of the Electricity Act, 2003 envisaged the determination of correct meters in the context of regulations to be made by the Authority and put a prohibition that after two years from the expiry of the appointed date no licensee could supply electricity except through installation of a correct meter in accordance with the regulations, it was expected from the Government to have constituted the Central Electricity Authority without delay and it was expected that the Central Electricity Authority would have notified the regulations.

84. It is unfortunate that till date the Central Electricity Authority has not notified any regulations under Section 55.

85. Every change creates uncertainties and there are bound to be apprehensions whenever a new system is adopted. The issue of electricity is a sensitive issue because virtually everybody in the city of Delhi, except the pavement dweller, is a consumer of electricity. The new electronic meter was not to the liking of many consumers as they felt that it was recording excessive consumption. This hue and cry can be heard in different parts of Delhi for the last 2 years. I simply fail to understand as to why the Government did not take expeditious steps to constitute the Authority and call upon the Authority to specify the regulations contemplated by Section 55 of the Electricity Act, 2003.

86. Needless to state, after the enforcement of the Electricity Act, 2003, power to determine the specifications of a correct meter was vested in the Authority and the Authority was obliged to specify the regulations determining the specifications of the correct meter. Much public discontent could have been avoided if the Government had acted promptly, and on its constitution, had the Authority formulated the regulations.

87. The cry that there is too much judicial interference in the executive field is often heard. This is an unfortunate impression generated as a result of media reports. The Courts have always recognised the limits within which it is practicable to deal with policy issues. The domain of the executive in framing and implementing policies, subject to the well recognised rules of judicial interference have been consistently recognised and followed by the Courts. But where a law is enacted and pursuant to the law the executive does not discharge its functions and a citizen approaches the Court alleging violation of his rights, what else can the Court do, if it is found that the executive is not discharging its functions, but to call upon the executive to wake up. The wake-up call is not an intrusion into the executive field. Disturbing ones sleep with a wake up call when the sun has arisen and time has come to break the snooze cannot be labeled as an intrusion on one's privacy. He who has to carry out public functions does not have an unlimited right to sleep. Those who are charged with public duties have to sleep and awake as regulated by law.

88. Section 55 of the Electricity Act, 2003 though couched in a negative mandate, but gives sufficient clue as to what was to happen in the transitional phase.

89. A bare perusal of Section 55 shows that the restriction on the power of the licensee to be bound by a specified meter while supplying electricity is circumscribed only when regulations are framed by the Authority.

90. Much was made out by learned counsel for the petitioner by placing reliance upon Section 185 of the Electricity Act, 2003. The Section reads as under:-

185. Repeal and saving. -(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and

the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made there under shall have effected until the rules under sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under Sub-section (1) of Section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in Sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general applicability of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

91. A bare perusal of Sub-section (1) shows that it is subject to the savings as provided in the Act. Sub-section (2) shows that notwithstanding the repeal of the Indian Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commission Act 1998, anything done or action taken including any rule or notification made under the repealed laws shall be deemed to have been done or taken under the corresponding provisions of the Electricity Act, 2003. Further, under Sub-section (3) of Section 185, the provisions of the enactments specified in the Schedule, not inconsistent with the provisions of the Act, shall apply to the States in which such enactments are applicable. Further, Indian Electricity Rules, 1996 and the Rules framed under the Electricity (Supply) Act, 1948 were saved and were made applicable till Rules or Regulations were framed under Section 53 of the Electricity Act, 2003 or were specifically rescinded.

92. The Schedule to Sub-section (3) of Section 185 lists 9 enactments, the same are as under:-

1. The Orissa Electricity Reform Act, 1995 (Orissa Act No. 2 of 1996).

2. The Haryana Electricity Reform Act, 1997 (Haryana Act No. 10 of 1998).

3. The Andhra Pradesh Electricity Reform Act, 1998 (Andhra Pradesh Act No. 30 of 1998)

4. The Uttar Pradesh Electricity Reform Act, 1999 (Uttar Pradesh Act No. 24 of 1999).

5. The Karnataka Electricity Reform Act, 1999 (Karnataka Act No. 25 of 1999).

6. The Rajasthan Electricity Reform Act, 1999 (Rajasthan Act No. 23 of 1999).

7. The Delhi Electricity Reforms Act, 2000 (Delhi Act No. 2 of 2001).

8. The Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 (Madhya Pradesh Act No. 24 of 2001).

9. The Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (Gujarat Act No. 24 of 2003).

93. Needless to state, the Delhi Electricity Reforms Act, 2000 continues to apply in the National Capital Territory of Delhi, save and except its provisions are not inconsistent with the Electricity Act, 2003.

94. The legal position, thereforee, would be that by virtue of the Delhi Electricity Reforms Act, 2000 and the rules framed there under, powers of the licensee under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 continue to ensure to the licensees in Delhi, save and except where the same are inconsistent with the provisions of Electricity Act, 2003. In the context of meters, the changed legal position would be the one contemplated by Section 55 of the Electricity Act, 2003. Meaning thereby that henceforth, powers to determine specifications of a correct meter stand vested in the Authority constituted under Section 70 of the Electricity Act, 2003. Power to be exercised by way of regulations framed. The language of Section 55 itself shows that till the regulations are framed the old regime continues.

95. The answer to the 4th question, thereforee, is that till regulations are framed under Section 55 of the Electricity Act, 2003, subject to adherence to the bids standards, distribution companies would have the authority to determine the specifications of a correct meter.

96. It would be unfair on my part to drop the curtains, having answered the 4 questions which were debated at the Bar. Why Counsel agreed that the real problem lies in the faulty wiring system in the buildings of the consumers. The problem is due to the reason that the new electronic meters have been designed in a manner that it can monitor both the phase and the neutral and calculate real average power based on larger of two currents in the current path through the energy meter. The electro mechanical meter was measuring the electricity only on the phase current. Due to said limitation of the electro mechanical meter,

consumers could easily tamper with the neutral and thereby ensure that the meter does not correctly record the electricity consumed. Essentially, this new feature in the electronic meter is an anti-theft and anti-tampering feature. But the problem is that, under the old regime, where a building had more than one connection consumer was not ensuring that the two connections do not have a common neutral wire. Separate neutral wires for different connections require an extra length of cable to be utilised. Well, it made sense for a consumer to save some money on wire when a building was constructed, but this was prohibited even under the earlier regime, evidenced by Rule 59 of the Indian Electricity Rules, 1956. Sub-rule (1) of Rule 59 reads as under:-

59. Precautions against failure of supply:

Notice of failures:-(1) The layout of the electric supply lines of the supplier for the supply of energy throughout his area of supply shall under normal working conditions be sectionalized and so arranged, and provided that cutouts or circuit breakers so located, as to restrict within reasonable limits the extent of the portion of the system affected by any failure of supply.

97. Further, Rule 31 required installation of a cut-out on consumer's premises for every service line other than an earthed or earthed neutral conductor. Further, where more than one consumer was supplied through a common service line, each consumer was to have an independent cutout at the point of junction to the common service. Rule 31 reads as under:-

31. Cut-out on consumer's premises.- (1)The supplier shall provide a suitable cut-out in each conductor of every service-line other than an earthed or earthed neutral conductor or the earthed external conductor of a concentric cable within a consumer's premises, in an accessible position. Such cut-out shall be contained within an adequately enclosed fireproof receptacle.

Where more than one consumer is supplied through a common service-line, each such consumer shall be provided with an independent cut-out at the point of junction to the common service.

(2) Every electric supply line other than the earth or earthed neutral conductor of any system or the earthed external conductor of a concentric cable shall be protected by a suitable cut-out by its owner.

98. As noted above in para 18, amendment 3 introduced to the bids standards in December 2004 added a para to existing clause 7.2, amending that when a number of consumers are connected to a single distribution mains for registering electricity supply to different consumer loads, separate service lines-phase(s) and neutral shall be used for each meter. Inter-connecting phases or neutrals of such loads shall be avoided. Each independent metered consumer load was to be directly connected to distributing mains through its meter in specified phase sequence. Condition 13 of the Conditions of Supply notified by DVB also required adherence to the Indian Electricity Rules. It reads as under:-

13. Wiring on consumer's premises:

For the protection of consumers and the public generally it is necessary that the wiring on the consumer's premises should conform to the provisions of the Rules made under the Act and the Rules of the Fire Insurance Company in terms of which the building is insured and be carried out by a licensed electrical contractor.

As required by rule 45 of the Indian Electricity Rules, 1956 no electrical installation work (including additions; alternations, repairs and adjustments to existing installations), except such replacements of lamps, fans, fuses, switches, low voltage domestic appliances and fitting as in no way alter the capacity and the character of the installation shall be carried out upon the premises on behalf of any consumer or owner for the purpose of supply to such consumer or owner, except by an electrical contractor licensed by the Delhi Administration in this behalf and under the direct supervision of a person holding a certificate of competency issued or recognised by the Delhi Administration. Any person committing a breach of Rule 45 ibid shall render himself liable to punishment under rule 139 of the said rules. As required by Rule 45 of the Indian Electricity Rules, 1956, no electrical installation work (including additions; alternations, repairs and adjustments to existing installations), except replacements of lamps, fans, fuses, switches, low voltage domestic appliances and fitting which do not alter the capacity and the

character of the installations could be carried out upon the premises on behalf of any consumer or owner for the purposes of supply.

99. Further, condition No. 17 of the Conditions of Supply required a consumer to send prior notice to the licensee before increasing the number or capacity of lamps, fans or motors etc. on his premises or whenever character of installations was changed after initial connection was taken. Condition 17 of the Conditions of Supply reads as under:-

17. Extensions and Alterations

Should a consumer at any time after the supply of energy has commenced, desire to increase the number or capacity of lamps or fans or motor etc., on his premises or in any way alter the position or character of his installation therein, notice thereof in writing must be sent to the Undertaking whose representative, will advice whether the alteration is sanctioned. The Undertaking's representative will then call and inspect the alterations and additions and if necessary change the meters and fuses and alter the service line after recovering the necessary charges, as laid down for such purposes. If the meter is the property of the consumer, the consumer shall change the meter if in the opinion of the Undertaking a larger or smaller meter is required.

Failure to observe the above procedure may derange the supply system and render the supply to the consumer liable to be summarily discontinued. During such time as alterations, additions or repairs are being executed, the supply to the circuit which is being altered, added to or repaired must be entirely disconnected and it shall remain disconnected until the alteration, additions, or repairs have been tested and passed by the Undertaking.

100. What has happened in Delhi is that the consumer was kept doped earlier on by Delhi Electric Supply Undertaking and thereafter by Delhi Vidyut Board. These two State controlled authorities had just not discharged their statutory duties to ensure that no consumer alters the circuit in his house after obtaining a connection. Large number of consumers, after obtaining connections, way back 30 to 40 years ago, as their family grew have made additions in their houses. Existing

circuits have been extended. There has been an intermixing of circuits. Inverters and generators have also added to the problem. People have installed a single generator or a single inverter in their premises through which electricity is supplied, when there is a power failure, to the entire building. Where there are more than 2 connections in such building, because of the common generator and inverter there is an intermixing of the neutral phase. How this affects the recording of consumption by the electronic meter may now be understood.

101. Say there are two connections in a single building, one on the ground floor and the other on the first floor. The consumer on the first floor operates 3 air-conditioners simultaneously. The consumer on the ground floor uses no air conditioner but has switched on fans in his house. The month is July. It is hot and humid. Current chooses the path of least resistance. The two consumers are using electricity. The current is drawn into the premises of the two consumers through the phase wire. It finds a return path through the neutral phase. Due to mixing of the neutral phase, the return path found by the current servicing the first floor is partly through the return path of the neutral of the ground floor. Since the new electronic meters have a capacity to record consumption by monitoring both phase and neutral and they calculate real average power based on larger of two currents in the current path, consumption of the consumer on the first floor gets recorded when the current enters i.e. passes the meter through the phase wire. Since his return current is partly flowing through the neutral wire servicing the ground floor (as the neutrals are intermixed) his differential continues to be recorded by the phase current. He pays for what he consumes, but the poor fellow on the ground floor has a problem. His return path current measured through his neutral phase records a higher differential as some part of the current of the first floor finds the return path through his neutral and as a result thereof his consumption is recorded higher because of the peculiar feature of the electronic meter.

102. But the electronic meter cannot be said to be faulty on this count. What is faulty is that the two consumers are having a common neutral and that the two consumers have not segregated their supply lines as required by the Rule 31 of the Indian Electricity Rules, 1956 and sectionalisation of the current paths through cut-outs and circuit breakers envisaged by Rule 59.

103. To some extent the blame must be shared by the distribution companies. They were aware of the problem. Evidenced by arguments of the learned Counsel for the respondent who very vehemently pointed out the cause of the problem. I see no reason why the respondents, firstly did not educate the consumer at whose premises electronic meter replaced the existing electro- mechanical meter and secondly for the reason the respondent did not compelled the consumer to provide circuit breakers and segregate his supply line by removing the intermixing of the neutral wires. The respondents could have notified such consumers that their supply would be disconnected if they did not, within a reasonable time to be specified by the respondent did not remove the deficiencies in the circuit in their premises. This tough message would have been to the benefit of the consumers who would have ultimately, on spending a few thousand rupees to segregate the neutral phase, benefited due to technical advancement sweeping the electronic industry in the form of electronic meters.

104. In a working paper presented by Prof. Upendra Baxi of the University of Delhi (unfortunately only parts of the paper are available with me and hence I am unable to make a complete reference thereto) he noted:. Law making remains the, more or less exclusive prerogative of a small cross section of elites. This necessarily affects both the quality of the law made as well its social communication, acceptance and effectivity. It also reinforces the highly centralised system of power. It is time that we consider the desirability and feasibility of building into the law making processes a substantial amount of public participation.

People's participation in the enforcement and implementation of the law is also not actively sought, sponsored or structured by the State . . . . equally new is the idea that there should be a social audit of major legislations by the beneficiaries or more generally, the consumers of legal justice.

105. It is heartening to note that the new regime of electricity laws have a system of social audit in the form of public participation when tariff is notified by DERC. At that stage, socially conscious citizens can pry into the balance sheets submitted by the distribution companies to check as to what revenue they have generated by distributing electricity to the consumer which is purchased by them from the

transmission companies. This social audit can detect excessive billing due to fast running meters if any. As has been noted by me above, the new regime envisages electronic meters at the Sub-stations to record the electricity going into the distribution lines from the Sub-station. By adding the units billed for to each individual consumer serviced through the Sub-station it could easily be seen whether the respondent is billing for more units than those transmitted.

106. As far as the petitioner is concerned, learned counsel for the petitioner has not been able to show that the electronic meter replaced was not as per ISI specifications. The meter was tested twice and was found to be in order. CPRI, an independent agency also checked the meter and found it to be correct. In the teeth of intrinsic evidence, external aid being past consumption is of no use and cannot be used to determine the correctness of the electronic meter. Relief as prayed that the respondent be directed to re- install an electro-mechanical meter cannot be granted.

107. The writ petition accordingly stands disposed of answering the four questions framed as aforesaid. Relief is declined to the petitioner. However, directions are issued to the respondent No. 1 to notify all consumers in whose premises electronic meters have been installed to check their wiring and ensure that no two connections have a common neutral. For future, before replacing the existing electro-mechanical meter with an electronic meter, wiring of the consumer would be checked and if it is noted that there is inter-mixing of the neutral wire, a weeks notice before replacing the meter be given to the consumer to have the deficiency removed.

108. Before parting I would like to place on record a note of appreciation fort the valuable assistance rendered by Shri Laliet Kumar, Advocate for the petitioner and Shri Amit Kapur, Advocate for respondent No. 1.

109. No costs.