NabIn Agarwal and anr. Etc. Vs. C.E.S.C. Ltd. and ors.

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Court : Kolkata

Decided On : Sep-30-2003

Reported in : AIR2004Cal227

Judge : Pranab Kumar Chattopadhyay, J.

Acts : Electricity Act, 2003 - Sections 2(51), 43, 172 185 and 185(2);; Indian Electricity Act, 1910 - Sections 21(2), 172(3)

Appeal No. : W.P. Nos. 1439 of 1999 and 320 and 2563 of 2001

Appellant : NabIn Agarwal and anr. Etc.

Respondent : C.E.S.C. Ltd. and ors.

Advocate for Def. : Jayanta Mitra and ;Jayak Gupta, Advs. (for CESC Ltd.) and ;Reetobrata Mitra, Adv. (for No. 5)

Advocate for Pet/Ap. : Hirak Mitra and ;R.L. Dutta, Advs.

Judgement :
ORDER

Pranab Kumar Chattopadhyay, J.

1. All the three writ petitions bearing W.P. No. 1439 of 1999, W.P. No. 320 of 2001 and W.P. No. 2563 of 2001 have been assigned before this Court for final

adjudication. All the aforesaid three writ petitions were heard analogously and are being disposed of by this common judgment as common questions of facts and law are involved.

2. The petitioners in the writ petitions bearing W.P. No. 1439 of 1999 and W.P. No. 320 of 2001 have challenged the disconnection of supply of electricity by the respondents-CESC Ltd. and also prayed, for a direction upon the said CESC Ltd. for restoration of the supply of electricity at the premises in question.

3. The other writ petition bearing W.P. No. 2563 of 2001 was filed at the instance of one of the tenants known as 'Ma Kali Metals Private Limited' for restoration of the supply of electrical energy at the industrial shed of the said tenant at a portion of the premises in question upon payment of a sum of Rs. 1,66,382/- towards the outstanding dues determined on the basis of consumption of electricity on proportionate basis.

4. Respondents-CESC Ltd. used to supply electricity at the premises in question which is a large plot of land measuring about 22 bighas. East India Rubber Works (P) Ltd. is the owner of the said premises. In pursuance of an agreement between the said owner and CESC Ltd., the authorities of the CESC Ltd. used to provide with High Tension Bulk Supply of electrical energy at the said premises since the maximum required monthly load of electricity at the concerned premises exceeded 50 KW. A Transformer was also installed at the said premises for stepping down the voltage for the purpose of redistribution of electrical energy according to the requirement of the tenants/occupants in the said premises.

5. M/s. East India Rubber Works (P) Ltd. is the registered consumer of electricity of the said CESC Limited. The factory shed of the owner of the premises was sub-divided into various sheds which were subsequently allotted to different tenants. The said tenants, however, subsequently formed an association under the name and style of East India Industries Complex Tenants Association. The said tenants Association filed the writ petitions being W.P. No. 1439 of 1999 and W.P. No. 320 of 2001.

6. From the records it appears that the sheds of the respective tenants are separately numbered and separated from each other. By a common arrangement between the owner of the premises and the tenants/ occupants, the electrical energy was provided to the tenants through separate sub-meters installed at different sheds under the occupation of the respective tenants. The landlord used to raise individual bills in respect of the tenants for consumption of electrical energy as recorded in the respective sub-meters.

7. According to the writ petitioners, the aforesaid bills had been regularly paid by the tenants. In any event, the owner of the premises in question became liable to pay huge amount to CESC Limited towards consumption of electricity at the said premises. Due to non-payment of electricity bills, respondents-CESC limited disconnected supply of electricity at the said premises in the year 1990.

8. It has been alleged by the writ petitioners that the landlord of the premises although collected money from the tenants towards the electricity bills but the same was not deposited with the CESC Limited and because of the defaults committed by the owners of the premises, respondents-CESC Limited disconnected the supply of electricity at the said premises. The tenants of the said premises thereafter formed an association known as East India Industries Complex Tenants Association.

9. The said association, after its formation, started collecting money from the tenants on the basis of the readings of the sub-merits installed at the various sheds and used to pay CESC Limited regularly. The said arrangement was initially working satisfactorily but subsequently trouble started and ultimately, CESC Limited again disconnected the supply of electricity at the said premises for non-payment of electricity bills. However, the supply was restored after filing of a writ petition and pursuant to the payment made in compliance with the order passed on the said writ petition. Subsequently again the said tenants association failed to make payment of the monthly electricity charges and the supply was therefore, disconnected by the CESC Limited on January 15, 2001.

10. The tenants association thereafter, filed the writ petition being W.R No. 320 of 2001 on March 24, 2001. Various orders were passed on the said writ petitions

from time to time including the appointment of new Special Officer who was directed to collect amount from the tenants in accordance with their proportionate contributions on the basis of their respective consumption. The said Special Officer made computations of the liabilities of the tenants including the petitioners of the writ petition bearing W.R No. 2563 of 2001.

11. Although the Special Officer computed the total liabilities of the tenants in respect of the said premises arid determined the proportionate contribution required to be made by the respective tenants on the basis of their consumption of electricity but some tenants had left the premises by this time and some are not at all interested in getting re-connection after depositing any amount towards the outstanding dues in view of the long continued disconnection of the supply of electricity. In the aforesaid circumstances, the petitioners of the writ petition being W.R No. 2563 of 200,1 applied before this Court for a direction upon the respondents CESC Limited to supply electricity directly to the portion of the premises under occupation of the petitioners by installing a separate meter and after accepting the sum of Rs. 1,66,382/- which was determined by the Special Officer as the outstanding liability of the petitioner company in respect of W.R No. 2563 of 2001.

12. The petitioner No. 2 of the writ petition being W.R No. 2563 of 2001 is a lawful tenant occupying a covered structure measuring about 9000 sq. ft. in the premises in question. The said shed is surrounded by a boundary wall with a separate entrance and thus separated from the remaining part of the balance area in respect of the premises No. 212, Raja Ram Chandra Ghat Road.

13. According to the petitioners of W.R No. 2563 of 2001 no relief can be granted in favour of the petitioners of the other writ petitions as the entire outstanding dues of the CESC Limited can neither be paid by the actual consumer namely, the owner of the premises in question nor all the tenants are ready and willing to arrange necessary funds for payment of the said outstanding dues of CESC Limited.

14. Mr. Hirak Mitra, learned Senior Counsel of the petitioners of the writ petition being W.R No. 2563 of 2001 strongly urged before this Court that his clients

cannot suffer for the non-cooperation of the other tenants and landlords of the premises in question. According to Mr. Mitra, the Special Officer appointed by this Court has fixed the outstanding liabilities in respect of the petitioners of the said W.R No. 2563 of 2001 and the petitioners are also ready and willing to make necessary payment in this regard.

15. Mr. Mitra also submits that the petitioner No. 2 of the writ petition being W.R No. 2563 of 2001 namely, Ma Kali Metals Private Limited is entitled to enjoy independent supply of electricity through a separate meter and the CESC Limited cannot refuse the aforesaid prayer of the said petitioner company in this regard.

16. The learned Counsel of the CESC Limited on the other hand submits that apart from the legal questions as to the rights of the individual tenants to receive separate supply, when a huge amount is still lying outstanding and payable by the consumer through whom the tenants have been receiving supply, there is a serious technical difficulty in giving separate supply to different consumers of the same premises from the point of view of safety and fire hazards.

17. According to the respondents CESC Limited, under its duly approved conditions of supply, a High Tension supply of electrical energy is provided to those premises where maximum load requirement of demand exceed 50 KW or where guaranteed consumption is 1,00,000 Units or more per annum. For such purpose a Transformer is installed for stepping down the voltage for re-distribution of energy to suit the requirement of sub-consumers. It has also been contended on behalf of the CESC Limited that in a premises which requires H.T. supply because of its load factor, a separate low voltage supply or supplies cannot be also maintained at the same premises as that is likely to expose the premises to a serious risk of accident, e.g. fire and other safety hazard.

18. It has further been contended on behalf of the CESC Limited that some of the tenants presently have a load of more than 50 KW which obliges them to obtain individual H.T. supply. According to the CESC Limited, sheds are adjacent to each other and are not structurally separated with separate entrance and also not having separate municipal holding numbers.

19. Mr. Jayant Mitra, learned Senior Counsel of the CESC Limited submits that it is hazardous from the user's point of view to allow two service connections with two different sources with different voltage of supply at the same premises. According to the learned Counsel of the CESC Limited, existence of two service connections create the possibility of two circuits getting accidentally inter-connected. The learned Counsel of the CESC Limited also submits that such inter connection can occur inadvertently through the consumers' installation when either of the services is shut down for maintenance or for other purpose and in such event life and property including distribution equipments are endangered.

20. Mr. Mitra further submits that in terms of Rule 59 (2) of the Indian Electricity Rules, it is the obligation of the licensee, CESC Ltd., to take reasonable precaution to avoid danger to the public at large or any authorised person in connection with the extension or repair of any work under the said rules. CESC Limited is also under an obligation to take all reasonable steps to avoid any foreseeable risk or loss involving human lives and properties.

21. Mr. Mitra also submitted before this Court that the supply of electricity through a separate meter for the owner or occupier at the same premises where H.T. supply exists amounts to installation of a second service which the respondents CESC Limited cannot permit due to the technical reasons and particularly to prevent accident. According to Mr. Mitra, if such supply is given at the instance of a prospective consumer then, the entire supply system of the respondents CESC Limited will be seriously disturbed apart from the fact that the same would amount to violation of the existing norms and conditions of supply. .

22. Mr. Mitra referred to and relied upon a decision of this Hon'ble Court in the case of Ranjit Mall Kothari v. C.E.S.C. Limited reported in (2002) 1 Cal HN 24.

23. Mr. Hirak Mitra, learned Senior Counsel of the writ petitioners on the other hand placed strong reliance upon the judgment of this Hon'ble Court in the case of Punam Chand Ranga v. CES.C Limited reported in (1995) 2 Cal HN 4 in support of his contention that the licensee while dealing with the application for supply of electricity in respect of any part or portion of the premises in question should reasonably apportion the outstanding dues for the entire premises and ask the

new applicant to pay only such portion of the outstanding dues as would be reasonably proportionate to the consumption made or intended to be made in respect of that particular portion of the premises. The relevant portion from the said judgment is set out hereunder :

'7.................................. Where however after such disconnection an application is made to the licensee for separate connection and meter in the name of another person in respect of a portion of the concerned premises, it is only logical and fair that the licensee in considering such application, instead of demanding the entire outstanding amount of dues for the entire premises should reasonably apportion the dues and ask the new applicant to clear only such portion of the outstanding dues as would be reasonably proportionate to the consumption made or intended to be made in respect of the particular portion of the concerned premises......:..........'

24. Undisputedly, huge amount remains due and payable to the respondents CESC Limited by the registered consumer, namely, M/s. East India Rubber Works (P) Ltd. and the service line has been disconnected by the respondents-CESC Limited on account of non-payment of the said dues. Although it has been claimed on behalf of the petitioners of W.P. No. 2563 of 2001 that like other tenants the said petitioners also made necessary payment towards the electricity charges regularly for consumption of electrical energy as recorded in the sub-meter installed for this purpose but in view of nonpayment of huge amount of electricity charges by the registered consumer, the petitioner company namely. Ma Kali Metals Private Limited has been unnecessarily suffering.

25. From the records it appears that the Special Officer appointed by this Court by the notice dated 20th September, 2001 asked the said company namely, Ma Kali Metals Private Limited to pay a sum of Rs. 6,75,233/- towards the arrear dues for consumption of electrical energy but the said company disputed the said determination of the Special Officer and specifically contended that a sum of Rs. 1,6,6,382/- is only due and payable towards the outstanding dues.

26. The Director of the said Ma Kali Metals Private Limited furnished details of the 'Pay Orders' issued earlier by the said company towards payment of the electricity

charges and thereby contended that the outstanding dues payable by the said company actually comes down to Rs. 1,66,3827- instead of Rs. 6.75,233/- as has been wrongfully claimed earlier by the Special Officer. It has further been contended on behalf of Ma Kali Metals Private Limited that all the 'Pay Orders' issued by the said petitioner company were encashed by CESC Limited and as such after giving credit to the total amount covered by the 'Pay Orders' issued earlier by the said petitioner company, a sum of Rs. 1,66,382/- is actually due and payable by Ma Kali Metals Private Limited to the CESC Limited.

27. Now, the principal issues to be decided in this petition are namely,

1) Whether it is really difficult for the respondents CESC Limited to supply electricity to different consumers through separate service connections in the premises wherein the prospective consumers are in possession of separately demarcated areas;

2) Whether the respondents CESC Limited can ask the prospective consumer to make payment of the entire outstanding dues of the erstwhile consumer in respect of the premises in question as a condition precedent to supply electrical energy to the portion of the said premises occupied by the concerned prospective consumer;

28. Regarding the technical feasibility for supply of electrical energy, I find that the premises in question is spread over a vast area of 22 bighas and the prospective consumer like Ma Kali Metals Private Limited is occupying a particular portion of the said premises which is distinctly separated from the rest of the portion of the premises in question. The shed of the said Ma Kali Metals Private Limited is geographically separated from the rest of the property and as such there cannot be any reasonable difficulty for effecting separate supply to the shed of the said Ma Kali Metals Private Limited.

29. Even though the vast area of 22 bighas has been recorded in the municipal records as premises No, 212 Raja Ram Chandra Ghat Road but the respondents-CESC Limited supplied electricity to various other premises which comprises of small areas of 1 or 2 cottahs only, far less to speak of bighas. Admittedly, the vast areas of 22 bighas have been sub-divided and let out to various tenants by the

landlord but as the same has not yet been sold out by the landlord, question of allotting different premises numbers by the municipal authorities cannot and does not arise.

30. The technical difficulties cannot be dependant on the allotment of premises numbers by the municipal authorities but CESC authorities have taken a peculiar stand in this regard.

31. According to the respondents-CESC Limited, separate service connections can be given in case of separate premises but if a large premises is sub-divided into distinct and specific areas and occupied by different occupants, the authorities of the CESC Limited would find it difficult, rather impossible, to effect supply of electricity to the respective areas even though the same are distinctly separated from each other, separately numbered as independent plots or sheds and surrounded by boundary walls. In my view, the aforesaid plea of technical difficulty is devoid of any merit. The conditions of supply cannot be interpreted in this fashion since it will be repugnant in the context as well as to the factual matrix. More about this later.

32. Furthermore at the time of hearing of the writ petition, learned Counsel of the CESC Limited was really concerned about the recovery of the outstanding dues in respect of the premises in question and the issue relating to the technical difficulties for effecting separate service connections to the respective tenants was not focused on behalf of the said respondents as really an impossible task. In my view, it cannot at all be a difficult task for the respondents-CESC Limited to provide second service connection at the same premises where high tension supply exists and the apprehension of the serious risk of accident raised on behalf of the respondents CESC Limited in this regard is not supported by proper materials.

33. It is really difficult to accept if a large premises is sub-divided by independent structures or industrial sheds then there can be any practical difficulty to provide separate supply to each such separated structure or industrial shed on the ground of serious risk of accident as the said structures or industrial sheds are not having separate municipal holding numbers although identified by the respective shed

numbers or plot numbers.

34. It has been specifically argued on behalf of the respondents-CESC Limited that conditions of supply of CESC Limited also does not permit separate low voltage supply or supplies in a premises simultaneously with high tension supply. Although in the conditions of supply it has been categorically mentioned in Clause 3 (d) that one service line only will be provided for any one premises but the definition of the premises should not be dependent only on the municipal holding number for the purpose of effecting supply of any consumer. Furthermore, Clause 3 (a) clearly provides for separate service to each consumer in a premises.

35. Occupiers of segregated buildings or structures covered or uncovered compounds even under one municipal number cannot be denied independent service connections if such occupiers fulfill other necessary conditions for effecting such supply of electricity particularly when Clause 3 (a) provides for separate service to each consumer in the same premises. If there is a repugnancy or inconsistency, it should be resolved in a purposive and fair manner which the Court has tried to do in this case.

36. Further, the Electricity Act, 2003 contemplates more than one service connections in the same premises. Section 43 of the said Act clearly provides that any person can demand or continue to receive supply of electricity for any premises having a separate supply after making necessary payment as may be determined in this regard by the appropriate commission. Section 43(2) of the said Electricity Act, 2003 is quoted hereunder :

'43 (2). It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) ;

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price determined by the Appropriate Commission.'

37. Conditions of supply have been framed by the CESC Limtied under Section 21(2) of the Indian Electricity Act, 1910. But for the reasons which have been discussed hereinafter those conditions of supply of CESC Limited cannot operate and remain valid after commencement of the Electricity Act, 2003. The Electricity Act, 2003 came into force w.e.f. 10th June, 2003 and the conditions of supply ceased to exist immediately after commencement of the said Act as the same was framed under Section 21(2) of the Indian Electricity Act, 1910 which has been repealed after commencement of Electricity Act, 2003.

38. The repeal and saving Clause as provided in Section 185 of the Electricity Act, 2003 does not save the conditions of supply framed under Section 21(2) of the Indian Electricity Act, 1910. Section 185 of the Electricity Act, 2003 is set out hereunder :

'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, insofar 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 thereunder shall have effect 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 enforced till 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 enactment 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 enactment 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 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 application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.'

39. It is significant to note that the Parliament has specifically referred to various sections of Indian Electricity (Supply) Act, 1910 and the rules framed thereunder as well as 'directives issued' by State Governments as specified in the schedule to the said Act of 2003. However, there is no reference to Section 21(2) of Indian Electricity Act of 1910.

40. Section 21(2) of the 1910 Act refers to a sanction by the State Government. Sanction given by the State Government is neither a rule nor a directive.

41. Section 6 of the General Clauses Act, 1897 also does not have any application in the facts of this case insofar as the conditions of supply which had been sanctioned by the State Government under Section 21(2) of the 1910 Act.

42. Section 172(b) of the Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') also does not save conditions of supply of CESC Limited. Section 172(3)

does not save any sanction granted under Section 21(2) of the 1910 Act but protects 'licenses, authorisations, approvals, clearances and permissions'. A sanction under Section 21(2) of the 1910 Act is not directly or indirectly covered by Section 172(b) of the Act of 2003. A sanction is not a license nor is it authorisation or approval or clearance or permission as will appear from any dictionary of English language. To avoid prolixity, I refrain from extracting the dictionary meaning of the aforesaid words.

43. Section 12 of the Act of 2003 reads as follows :

'12. Authorised persons to transmit supply, etc., electricity.-- No person shall --

a) transmit electricity; or

b) distribute electricity; or

c) undertake trading in electricity,

unless he is authorised to do so by a license issued under Section 14, or is exempt under Section 13.

44. Section 14 of the Act of 2003 provides that the Appropriate Commission will grant license for transmission of electricity and to distribute electricity. This, is the license referred to in Section 172(b).

45. The first proviso to Section 14 of the Act of 2003 also refers to licenses, clearances and approvals in similar circumstances as contemplated under Section 172(b) of the Act of 2003.

46. The words 'licenses, authorisations, approvals, clearances and permissions' appearing in Section 172(b) of the Act of 2003 have clearly to be read ejusdem generis otherwise the sentence will, become meaningless. In any view of the matter the said words cannot refer to any sanction which is a different matter altogether.

47. My attention has been specifically drawn to Section 185(2)(a) and 185(2)(e) of the Electricity Act, 2003 by Mr. Jayanta Mitra, learned Senior Counsel of the

CESC Limited. It does not appear that the said provisions have any relevance in the facts of this case. Section 185(2)(a) merely makes it clear that repeal of 1910 Act, 1948 Act and 1998 Act will not invalidate the actions already taken under the said Acts. However, the question is whether after the commencement of the new Act of 2003, the Conditions of Supply, which are inconsistent with the provisions of the new Act, would continue to be valid. The conditions of supply cannot be described to be a rule, a notification or. instruction or an order or a notice nor a declaration, permission, authorisation or exemption. Furthermore, Section 185(2)(a) makes it clear that if the action in question is inconsistent with the provisions of the Act of 2003 the same will not be saved.

48. Insofar as Section 185(2)(e) is concerned, the same relates to directions issued by a State Government under the enactment specified in the schedule. The Indian Electricity Act, 1910 is not an enactment specified in the schedule. It is the directions of this nature which are contemplated under Section 185(2)(e). The conditions of supply have been sanctioned under Section 21(2) of the Indian Electricity Act, 1910 and there is no provision saving or protecting those conditions of supply. Those conditions which are wholly inconsistent with the new Act also do not survive under Section 185(2)(a) even if it is accepted that they come under the expression 'any action taken' in view of the fact that under the new Act there is no corresponding provision like Section 21(2) of Indian Electricity Act, 1910. Therefore, neither Section 185(2)(a) nor 185(2)(e) of the new Act can save those conditions of supply. If the Parliament desired to save the conditions of supply it would have specifically provided for the same in Section 172 or Section 185 of the Act of 2003.

49. It appears that there are good reasons why the Parliament did not desire to save the conditions of supply of any of the licensees. The Electricity Act of 2003 has given some protection to the consumers in various fields as well as to the licensees. The scheme of the new Act does not permit disconnection of electric supply on the ground of non-payment of electricity dues except in accordance with the manner provided for under Section 56 of the said Act. The amount due has to be demanded in writing and disconnection can be made effective only after giving not less than 15 clear days notice in writing. A perusal of Section 56 of the new Act

will show that limits have been put on the amount that can be claimed from a consumer which was not there in the earlier statutes. Section 135 of the new Act clearly provides that a person may be liable for imprisonment or fine or with both in case of theft of electricity. However, unlike the provisions contained in the conditions of supply of CESC Limited, which permits the employees of CESC Limited (which is a private limited company) to enter into consumer's premises, the new statute empowers only officer authorised by the State Government to enter, inspect any places where he has reason to believe that the electricity has been or is being or is likely to be used unauthorisedly.

50. Detailed provisions have been made for preparation of seizure list and Criminal Procedure Code has been made applicable in this regard. Section 135 as well as other Sections do not provide for any disconnection at all even if the authorised officer finds that there has been unauthorised use of electricity. Section 126 of the Electricity Act of 2003 provides that if it is found by the officer that a consumer is 'indulging in unauthorised use' of electricity, he will make provisional assessment and thereafter a demand has to be made. 'Unauthorised use of electricity' has been defined in Section 126(6) explanation (b) and the definition for all practical purposes includes theft of electricity as is understood. Here again no power has been given for disconnection of electric supply.

51. Therefore, the amount has to be demanded in accordance with Section 56 of the new Act after assessment under Section 126 and only if a default is committed in payment of the amount then the electricity line can be disconnected. Section 50 of the new Act does not seem to empower the State commission to frame a Code providing for disconnection on the ground of unauthorised user of electricity within the meaning of Section 126 or Section 135 of the Electricity Act, 2003. The Clauses 26 and 31 of the conditions of supply of CESC Limited are wholly repugnant to diverse provisions of the Electricity Act of 2003. It cannot be that the licensee, in this case CESC Limited, can continue to apply the conditions of supply which are violently opposed to and/or contrary to Sections 56, 126, 135, 172 and 185 of the Electricity Act of 2003. It cannot be that the licensee (i.e. CESC Limited) can resort to Clauses 26 to 31 of conditions of supply ignoring Sections 56, 126, 135 and 185 etc. of The Electricity Act, 2003. This will amount to, in the language

of Krishna Iyer, J. 'Survival after death'. More importantly, so far as this case is concerned, Section 2(51) of the Act of 2003 defines premises as including 'any land, building or structure'. It does not say that the premises must be one building or one integrated building. Conditions of Supply of CESC Limited, under Indian Electricity Act, 1910, since repealed, is also contrary to and inconsistent with the definition of premises as contained in Electricity Act of 2003 and it cannot override the definition under the new Act.

52. Section 43 of the Act of 2003 obliges every distribution licensee to give supply of electricity to the owner or occupier of any premises. Section 43(2) proviso clearly provides that an occupier or owner is entitled to demand separate supply at the premises subject to payment of such amount as may be determined by the Appropriate Commission. This section is wholly inconsistent with the stand taken by the CESC Limited although the present conditions of supply of CESC Limited also entitles the consumer to insist on a separate supply (Clause 3 (a)).

53. Under the Electricity Act of 2003, no licensee including CESC Limited can refuse to give supply to owners or occupiers of premises and the owners and occupiers have the right to obtain a separate supply. This is a statutory right given under the Electricity Act of 2003 and it is not open to any licensee including CESC Limited to render the statute ineffective by relying on conditions of supply framed under the earlier Act, since repealed.

54. Accordingly, I hold that the conditions of supply have ceased to be valid in view of diverse and different provisions pf the Act of 2003 and the authorities of the CESC Limited, therefore, cannot rely on the same.

55. In the present case, a vast area under one municipal holding number has been sub-divided by independent structures or industrial sheds and one of such industrial sheds is under occupation of Ma Kali Metals Private Limited, petitioner No. 2 of W.P. No. 2563 of 2001. The said company specifically claimed that the said industrial shed occupied by the company is bounded by walls on all sides with separate entrance and shed number and is also geographically separated from the remaining part of the larger property.

56. In the aforesaid circumstances, there can be no valid technical reason to deny separate supply of electricity to the industrial shed of the Ma Kali Metals Private Limited, petitioner No. 2 of W.P. No. 2563 of 2001 which has separate shed number.

57. The other issue raised by the respondents CESC Limited relates to recovery of outstanding dues in respect of the premises in question.

58. The original consumer being the owner of the premises in question is no longer interested to restore supply of electricity at the premises in question. The individual tenants like Ma Kali Metals Private Limited, as occupants of the respective industrial sheds are really interested for getting supply of electricity to run their respective industrial units. As a matter of fact, due to non-supply of electricity for a considerable period, several tenants already lost their interests to run their industrial units at the premises in question and it has been submitted by the writ petitioners that some of the tenants have already shifted their industrial units elsewhere.

59. At present the writ petitioners of W.P. No. 2563 of 2001 are still interested to get independent supply of electricity for their industrial unit and still agreeable to make payment of their proportionate outstanding dues as determined by the Special Officer appointed by this Court for the purpose of getting a separate independent supply from the CESC Limited in respect of their industrial shed.

60. This Court in the case of Sri Balasaria Constructions (P) Ltd. v. CESC Limited, reported in (1996) I Cal HN 15 has specifically held that non-payment of bill despite supply of electrical energy is the personal liability of the consumer and the right of the licensee is to sue the consumer for recovery of its dues.

61. The observations of the Supreme Court in the case of Isha Marbles v. Bihar State Electricity Board, reported in : [1995]1SCR847 have been quoted in the aforesaid decision of this Hon'ble Court in the case of Sri Balasaria Constructions (P) Ltd., 1996 AIHC 2723 (supra). The relevant paragraphs from the aforesaid decision of this Court are quoted hereunder :

'40. ....in view of the latest pronouncement of the Supreme Court upholding the aforesaid decisions of the Patna High Court in Isha Marbles v. Bihar State Electricity Board and another, reported in : [1995]1SCR847 wherein the Supreme Court categorically has held that in terms of Section 24 of Indian Electricity Act that the liability of the consumer cannot be thrust upon a third party.

The law was stated thus :--

'From the above it is clear, the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.'

'41. The Apex Court observed :--

'No doubt, dishonest consumers cannot be allowed to play tyrant with the public property but inadequacy of the law can hardly be a substitute for overzelousness.'

62. In view of the aforesaid settled legal position, the authorities of the CESC Limited cannot demand any amount from the petitioners towards the arrear dues of the erstwhile consumer namely, the landlord herein.

63. In the aforesaid circumstances, the prospective consumers like the Ma Kali Metals Private Limited are not required to make payment of the outstanding dues of the erstwhile consumer for the purpose of getting a separate supply directly from the CESC Limited and the respondents CESC Limited also cannot ask the prospective consumer including the petitioners of W.P, No. 2563 of 2001 to settle the issue relating to the outstanding dues of the erstwhile consumer in respect of the premises in question as a condition precedent to supply of electrical energy.

64. One other important factor regarding industrial growth of the State cannot be overlooked or ignored by this Court. Admittedly, the vast area of 22 bighas has

been let out to various tenants wherein numbers of industrial units have been set up individual entrepreneurs. The industrial sheds are distinctly separated from each other but due to non-supply of electrical energy most of the industrial units had to be closed which resulted in unemployment of hundreds of employees apart from loss of valuable industrial productions supposed to be produced by those industrial units.

65. Unless a practical view is taken by the respondents-CESC Limited, huge outstanding dues cannot be recovered and at the same time the entrepreneurs having their respective industrial units at the premises in question would also be compelled to shift their units elsewhere. The aforesaid deadlock will neither enure to the benefit of the respondents-CESC Limited nor the same would be beneficial for the industrial growth in the State.

66. The respondents-CESC Limited have not yet taken any step to recover its dues from the consumer namely, the owner of the premises in question. Presumably, the authorities of the said CESC Limited have realised that the huge outstanding dues could not be recovered from the actual consumer. If the individual industrial shed holders are provided with separate electric connections for the purpose of running their respective industrial units then, in that event, those shed holders would come forward to make payment of their proportionate dues as determined by the Special Officer appointed by this Court.

67. As a matter of fact, at the time of hearing of the writ petition, Mr. Hirak Mitra categorically submitted that several tenants are still ready and agreeable to make payment of their proportionate outstanding electricity dues as determined by the Special Officer appointed by this Court in the event, the respondents-CESC Limited provide separate supply of electrical energy to the respective industrial sheds occupied by the respective tenants.

68. The aforesaid practical solution as suggested on behalf of the tenants through the writ petitioners of W.P. No. 2563 of 2001 should have been seriously taken into consideration by the authorities of the CESC Limited. Unfortunately, the aforesaid suggestion regarding payment of the outstanding dues by the tenants was not considered seriously by the authorities of the CESC Limited.

69. If the respondents-CESC Limited are allowed to stick to their decision regarding non-supply of electricity to any part or portion of the premises in question even though the respective prospective consumer of that part or portion of the premises in question is ready and agreeable to comply with necessary formalities including payment of outstanding dues of the erstwhile consumer on proportionate basis as determined by the Special Officer appointed by this Court, then, in that event, in near future, the respective entrepreneurs who are in possession of different industrial sheds would shift their units elsewhere like some other tenants who have already done so and in future, the said vast land would be ultimately sold in small plots.

70. In view of the decision of this Court in the case of Sri Balasaria Constructions Pvt. Ltd., 1996 AIHC 2723 (Supra), no charge is created in the premises where electricity is supplied and no liability can be fastened on the transferee who purchased the property in good faith. Thus, the CESC Limited would not be able to realise any amount towards the outstanding dues of the erstwhile consumer from the future plot holders who would purchase part or portion of the premises in future but in such circumstances, the existing entrepreneurs would permanently shift their respective industrial units elsewhere resulting fn serious repercussions on the State economy apart from unemployment of hundreds of youths engaged or required to be engaged in those industrial units.

71. For the aforementioned reasons, I am of the view that the authorities of the CESC Limited should not refuse to supply electricity to the petitioner company namely, Ma Kali Metals Private Limited (Petitioner No. 2) in W.P. No. 2563 of 2001.

72. Accordingly, the respondent authorities of the CESC Limited are directed to effect supply of electricity to Ma Kali Metals Private Limited by installing a separate meter to its industrial shed erected at the portion of the premises in question being Premises No. 212, Raja Ram Chandra Ghat Road, Sodepur, Panihati, Dist: 24-Parganas (North) within 4 weeks from the date of communication of this order and subject to completion of necessary formalities by the said company including payment of Rs. 1,66,382/- only being the proportionate outstanding dues out of the

total outstanding dues to which the said company agreed.

73. The writ petition being W.P. No. 2563 of 2001 is thus disposed of.

74. Admittedly, the other two writ petitions being W.P. No. 1439 of 1999 and W.P. No. 320 of 2001 have been filed before this Court for a direction upon the respondents CESC Limited to restore the supply of electricity through original service connection in respect of Consumer No. 01008001006 and Meter No. 1994920 installed in the name of M/s. East India Rubber Works (P) Ltd. but due to non-payment of the outstanding dues by the aforesaid consumer, no direction can be passed by this Court for restoration of supply of electrical energy in respect of the said consumer number.

75. Accordingly, I do not find any merit in the aforesaid writ petitions and the same are, therefore, dismissed.

76. In the facts and circumstances of this case, there will be, however, no order as to costs.

77. All parties are to act on the signed xerox copy of this judgment and order on usual undertaking.

LATER :

78. After pronouncement of the judgment, the learned Advocate of C.E.S.C. Limited prays for stay of the operation of this judgment and order. I find no reason to grant such stay. Accordingly, the aforesaid prayer for stay is refused.