

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.01.2009

Coram

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.Nos.343 and 344 of 1998 and
W.P.Nos.7417 and 7418 of 2000 and
W.P.No.6106 of 2000

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Salem Electricity Distribution Circle, Salem.
- 2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Salem Region, Erode.
- 3.Tamil Nadu Electricity Board
represented by its Chairman
Anna Salai, Chennai 600002.
- 4.The Executive Engineer O & M
Tamil Nadu Electricity Board,
Town Thammanna Chetty Road,
Four Road, Salem 9.

... Appellants in W.A.Nos.343 & 344 of 1998

Vs.

Annamalai Cotton Mills P. Limited,
represented by its Managing Director,
Gajjinayakkanpatti, Salem.

... Respondent in W.A.Nos.343 & 344 of 1998

PRAYER: Appeals filed under Clause 15 of the Letters Patent against the order passed by the learned single Judge in W.P.Nos.9027 and 9028 of 1997 dated 25.02.1998.

W.P.Nos.9027 of 1997 is filed under Article 226 of the constitution of India to issue a Writ of Certiorari calling for the records of the first respondent relating to his order No.SEDC/S1M/AEE.G1/AE-1/F/TTA/(1)/95-96 PR 240/95 dt.26.5.1995 confirmed in appeal by the Second Respondent's order 11.6.97 and quash the same.

W.P.No.9028 of 1997: To issue a Writ of declaration declaring paragraphs 8 and 10 contained in Chapter 37 titled Schedule Part -1 and Appendix VI and VII, contained in Chapter 38, title Schedule - Part II in the terms and conditions of supply of electricity framed by the 3rd Respondent by its proceedings B.P.Ms.(FB) No.161 dated 24.12.98 as they are ultravires the powers of the third respondent

and violative of Article 14 of the constitution of India and hence void, illegal and invalid and consequently set aside the show cause notice No.1 EE/O&M/T/SDD/DM/F.Theft/D.No.847/95 dated 17.5.95 issued by the fourth respondent and the order No.SEDC/S1M/AEE.G1/AE1/F.TTA/(1)/95/PR/240/95 dated 26.5.95 passed by the first respondent which was confirmed by the order dated 11.6.1997 by the second respondent

For Appellants : Mr.P.S.Raman, AAG-I
For Mr.N.Muthusamy

For Respondent : Mr.K.Ravi

W.P.Nos.7417 and 7418 of 2000:-

Annamalai Cotton Mills P. Limited,
represented by its Managing Director,
Gajjinayakkanpatti, Salem
Rep. By its Managing Director
Mr.P.Sundaram Chettiyar

... Petitioner in W.P.Nos.7417 &
7418/2000

V.

- 1.The Tamilnadu Electricity Board,
rep. By its Chairman,
800-Anna Salai, Chennai 600 002.
- 2.The Superintending Engineer,
Tamilnadu Electricity Board,
Chennai Electricity Distribution Circle,
West, Tirumangalam SS Complex
Thirumangalam, Chennai 600 040.
- 3.The Executive Engineer O & M, Town
Tamilnadu Electricity Board,
1-B, Venkata Rao Road, Salem-636 001.

... Respondents in W.P.Nos.7417 & 7418/2000

Prayer in W.P.7417/2000: Petition filed under Article 226 of the Constitution of India praying for an issuance of writ of certiorari calling for the records of the second respondent relating to his order dated 20.03.2000 bearing Lr.No.SE/CEDC/W/G1/AEE/AE/2/F.HT.M/s.Annamalai Cotton Mills 814/2000, and quash the same.

Prayer in W.P.7418/2000: Petition filed under Article 226 of the Constitution of India praying for an issuance of writ of mandamus directing the respondents 1 to 3 to restore supply of electricity to the petitioner's mill bearing HT Service Connection No.30, forthwith.

For Petitioner : Mr.A.R.L.Sundaresan,S.C.

For Respondents : Mr.P.S.Raman, AAG.I
For Mr.N.Muthusamy

W.P.No.6106 of 2000:-

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Pacific Roofings (P) Limited
represented by its Managing Director,
N.R.Dhanapalan, NRD Towers, 54 Jawaharlal Nehru

Chennai 600 083.

... Petitioner

V.

1. Tamil Nadu Electricity Board,
represented by its Chairman
Anna Salai, Chennai 600 002.
2. Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
Olimohammedpet, Kancheepuram.
3. Executive Engineer,
Operations and Maintenance/North
Kancheepuram 2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for an issuance of writ of declaration declaring that paragraphs 8 and 10 contained in Chapter 37 titled 'Schedule Part 1' and Appendix VI and VII, contained in Chapter 38 titled 'Schedule Part II in the terms and conditions of Supply of Electricity framed by the first respondent are ultra vires the powers of the first respondent, void, illegal and constitutional and unenforceable in so far as it relates to the action initiated against the petitioner culminating in the impugned order of the second respondent dated 5.1.1999 in Lr.No.SE/KEDC/GL/A2/HT/APTS D 503.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.P.S.Raman, AAG.I
For Mr.N.Muthusamy

COMMON JUDGMENT

M.VENUGOPAL, J.

The appellants/respondents have preferred these writ appeals aggrieved against the orders dated 25.2.1998 in W.P.Nos.9027 and 9028 of 1997 passed by the learned Single Judge in allowing the writ petitions and directing the appellants/respondents to restore the electricity supply to the respondent/petitioner's mill forthwith and also given liberty to the appellants to take proper action as may be open to them in law for alleged theft of electric energy.

2.The respondent/petitioner mill has filed W.P.No.9027 of 1997 praying for the issuance of certiorari calling for the records of the first appellant/first respondent relating to his order No.SEDC/S1m/AEE.G1/AE.1/F/TTA/(1)/95-96 PR 240/95 dated 26.5.1995 confirmed in appeal by the second respondent's order dated 11.6.1997 in Lr.No.CED/S1m/ AEE/G1/F.Appeal/(AGM)/PR 1477/97 and quash the same.

3.The respondent/petitioner mill has filed W.P.No.9028 of 1997 praying for the issuance of writ of declaration declaring paragraphs 8 and 10 contained in Chapter 37, titled Schedule - Part 1 and Appendix Part II in the terms and conditions of supply of Electricity framed by the third respondent by its proceedings B.P.Ms.(FB)No.161

dated 24.12.1988 as they are ultra vires the powers of the third appellant/third respondent and violative of Article 14 of the Constitution of India and hence void, illegal and invalid and consequentially set aside the show cause notice N1.EE/O&M/T/SDD/DM/F, Theft/D.No.847/95 dated 17.5.95 issued by the fourth respondent, and the order No.SEDC/Slm/AEE.G1 /AE1/F.TTA/(1)/95/PR/240/95 dated 26.5.1995 passed by the first appellant/first respondent which was confirmed by the order dated 11.6.1997 by the second appellant/second respondent.

Averments in W.P.Nos.9027 & 9028 of 1997:

4.00.The respondent/petitioner mill has stated that the show cause notice which preceded the impugned order dated 26.05.1995 was bald and vague without disclosing any factual detail that required to be explained or rebutted and that in the reply the theft of energy was denied and that the show cause notice itself was in a standard form prescribed in Appendix VI of the Terms and Conditions of supply of electricity and that a show cause notice in the same form, identically worded was quashed by this Court by an order dated 19.12.1990 in W.P.No.125 of 1990 specific ground that such a show cause notice was vague and the present show cause notice is liable to be quashed on the very same ground and that the impugned order itself was passed in total violation of all principles of natural justice and that the order was found to be a non-speaking one and that the first appellant/first respondent has not been assigned with the power to pass the impugned order by any provision of law or any Statutory Rule or Regulation and neither the Indian Electricity Act, 1910 nor the Electricity (Supply) Act, 1948 grants any such power to the first appellant/first respondent and no rule or regulation made under any of these two Acts, grants such power to the first appellant/first respondent and in fact Section 79(1) of the 1948 Act empowers the third appellant/third respondent to make regulations to set out the principles of governing the supply of electricity to non-licensees under Section 49 and the third appellant/ third respondent in the present case without making such regulations, has framed terms and conditions of supply to be read as part and parcel of its contract of supply and has named in such terms and conditions the first appellant/ first respondent as an authority to make such assessment and therefore, the provisions in the Terms and Conditions authorising the first appellant/first respondent to make such assessment is not either a statutory provision or a rule or regulation and that it is a mere contract stipulation and that the stipulation is contained in para 10 of the terms and conditions made available only in the year 1996, proclaiming as amended upto 31.8.1996 and the same provision was contained in para 11.01 of terms and conditions issued earlier and the authority empowered to make such assessment does not imply or include an authority to adjudicate upon a disputed issue whether in fact, theft was a violation of conditions of theft of energy and that the first appellant/first respondent has no legal authority to hold that the respondent/petitioner committed theft of energy. Further, the stand of the respondent/mill is that the second appellant/second respondent as an authority should have held that any provision in the terms and conditions suggesting that officer of the third appellant/ third respondent Board may make such adjudication and make such assessment will be a unilateral stipulation prescribed in a printed

form without any meaningful option to the consumers to agree or not to agree for such stipulation, especially since the third appellant/third respondent has the monopoly over the supply of electricity and moreover the appellate authority should have held that even according to the terms and conditions the question of assessment of extra levy for theft of energy will arise only after the consumer is found to be guilty of such theft within the meaning of Indian Electricity Act and such a finding under the said act can be rendered only by a First Class Magistrate and that is so implied clearly in the opening paragraph of the terms and conditions relating to theft of energy and extra levy as per para 8 and para 9 in the earlier terms and conditions.

4.01. The pleas taken by the respondent/mill are to the effect that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and the legality of a Government action must be judged on the reasons stated in the impugned order and it is impermissible for the Government to take a new ground and that a failure of natural justice before the trial body cannot be cured by a sufficiency of natural justice by the appellate authority and a post decisional opportunity of hearing does not subserve the rules of natural justice and even in the impugned order there is no categorical finding that the respondent/mill is guilty of theft of energy and paragraph 10 of the agreement between the respondent/mill and the third appellant/third respondent contemplates a finding that the consumer indulged in theft of energy as a condition precedent for the third respondent to make an extra levy for such theft and that the order of the appellate authority is second appellant/second respondent instead of acting independently as a statutory functionary had acted as a loyal servant of the third appellant/third respondent, thus manifesting a clear bias and prejudice in the matter and that the appellate authority erred in discussing and relying upon the papers and materials not mentioned in the show cause notice and in respect of which no opportunity was at all given to the respondent/mill to put forth their view, thus causing great prejudice to the respondent/mill and that the appellate authority ought to have held that the measure of such compensation is strictly governed by the principles set out in Section 74 of the Indian Contract Act and in the present case, extra levy, so called, is only a compensation since penalties for theft have been duly and exhaustively prescribed under Section 39 to 49 of the Indian Electricity Act, 1910, in which, Section 48 expressly states that such penalties shall be in addition to any liability in respect of compensation and in any case, compensation cannot be a deterrent penalty and the extra levy has been worked out at a rate which is 4 times of the highest rate chargeable for HT service and the levy is calculated for 12 months and every now and then there had been power failure forcing the respondent/mill to spend more than 38.8 lakhs on diesel and oil consumption for their generators for the period from 01.04.1994 to 30.04.1995 and notwithstanding that the meter and the connection were periodically inspected and found by the officers of the third appellant/third respondent intact all along during the period and that the appellate authority failed to consider this aspect though documentary proof for the said diesel consumption and periodical

testing of the meters were produced before him.

4.02.The respondent/mill has filed earlier W.P.No.7556 of 1995 and civil suit O.S.No.407 of 1995 on the file of Sub Court, Salem challenging the show cause notice and the impugned order dated 26.05.1995 and both of them were withdrawn before this Court which left open all the issues agitated therein and permitted the such withdrawal as per orders dated 07.08.1995 in L.P.A.No.198 of 1995 and W.A.No.833 of 1995.

4.03.The respondent/mill filed W.P.Nos.11039 to 11042 of 1995 challenging the show cause notice, the impugned order, the disconnection and certain terms and conditions all resulted in W.A.No.293 to 296 of 1996 and W.A.No.123 of 1996 which were disposed of by a common order dated 20.06.1996 whereby all the questions including the challenges on the ground of valuation of natural justice and lack of authority on the basis of the terms and conditions have been left open to be agitated before the second appellate authority and the condition imposed by this Court in regard to the payment of Rs.2 crores have been fully complied with by the respondent/mill.

Common Counter averments:

5.00.The respondent/petitioner mill has initiated the third round of litigation after approaching the Court already and that they filed O.S.No.160 of 1995 on the file of Vacation Court Judge, Salem challenging the assessment order issued by the appellant Board in P.R.No.240/95 dated 26.05.1995 to pay an amount of Rs.9,43,87,324/- towards extra levy for the theft of electricity committed by the respondent/petitioner in his service No.H.T.S.C.30 and in I.A.No.511 of 1995 an interim injunction has been prayed for against the appellant Board from disconnecting the supply and a detailed conditional order of injunction has been passed by the Court directing the respondent/ petitioner to furnish a bank guarantee of Rs.2 crores on or before 23.06.1995 and further directed the respondent/ petitioner to prefer an appeal to the competent authority after paying the balance amount of Rs.7,43,87,324/- and as against the said order the respondent/petitioner filed C.M.A.No.633 of 1995 on the file of this Court during vacation and this Court has granted a limited injunction for a week and ordered notice to the appellants and later on 18.07.1995 the appeal has been dismissed with a modification that the bank guarantee must be for Rs.5,18,84,084/- and the amount to be paid to the Electricity Board as Rs.4,25,03,240/- etc.

5.01.The further pleas of the appellants/respondents are that as against the orders passed in C.M.A.No.633 of 1995 by this Court, the respondent/ petitioner mill preferred L.P.A.No.198 of 1995 and also filed W.P.No.7556 of 1995 on the same cause of action and later on coming to know a suit has been filed on the same cause of action, the writ petition has been dismissed on 21.07.1995 and as against the said order W.A.No.833 of 1995 has been filed and later this Court has withdrawn the suit O.S.No.407 of 1995 which has been numbered as O.S.No.160 of 1995 from the file of Sub Court to this Court and has permitted the appellant to withdraw the suit and accordingly, the

said suit has been dismissed as withdrawn and all the contentions raised in the suit have been left open and resultantly, C.M.A.No.633 of 1995 and L.P.A.No.198 of 1995 have been dismissed as infructuous. But the respondent/petitioner has filed 1)W.P.No.11039 of 1995 questioning the show cause notice dated 17.05.1995; 2)W.P.No.11040 of 1995 questioning the assessment order passed by the Superintending Engineer, dated 26.05.1995; 3)W.P.No.11041 of 1995 challenging the validity of the terms and conditions of supply of electricity; 4) W.P.No.11042 of 1995 for a mandamus to restore the service connection which was disconnected on 07.08.1995 and this Court has disposed of W.P.Nos.11039, 11040 and 11042 of 1995 leaving the W.P.No.11041 of 1995 alone pending. This Court directed the respondent/ petitioner to deposit a sum of Rs.10 lakhs within a period of two weeks from 28.08.1995 and on such deposit, the Board has been directed to restore the supply and that the respondent/petitioner mill has been directed to deposit Rs.100 lakhs within a period of five months from 28.08.1995 and further direction has been issued to the respondent/petitioner to file an appeal against the assessment order and the Board has been directed to keep the appeal pending till the respondent/ petitioner complied with paying of all deposits and thereafter, to dispose of the appeal according to law after giving opportunity of hearing to the mill and to pass a reasoned order and if the respondent/petitioner mill commits default in the deposits then it is open to the Board to disconnect the supply and further that the Court has taken note of the fact that the respondent/petitioner has already furnished a bank guarantee to the tune of Rs.1 crore pursuant to the criminal proceedings initiated against the respondent/mill for grant of anticipatory bail in CrI.O.P.No.3529 of 1995. On 28.08.1995 the respondent/ mill has deposited a sum of Rs.10 lakhs and earlier has given an undertaking to abide by the terms and accordingly, the appellant Board has restored the supply in accordance with the directions issued in the order.

5.02.Added further, the fact is that the respondent/mill filed an appeal against the order of Superintending Engineer, Tamil Nadu Electricity Board dated 26.05.1995 to the second appellant, Chief Engineer (Distribution), Salem Region at Erode but the respondent mill has not complied with the two conditions relating to the deposit amount and hence, the second appellant has kept the appeal pending.

5.03.The respondent/mill has filed W.P.No.11041 of 1995 praying that certain paragraphs in the terms and conditions of supply of electricity were null and void and that this Court has held that the respondent/mill is not entitled for a writ of declaration has prayed for since the contention that the terms and conditions of electricity supply are wholly unfair and opposed to public policy etc. has not been accepted etc. But this Court has held that the show cause notice issued by the Tamil Nadu Electricity Board has been invalid as it has violated the principles of natural justice and has quashed the same as well as the order of assessment dated 26.05.1995.

5.04.Moreover, the appellants/Board filed W.A.No.123 of 1996 against the order in W.P.No.11041 of 1995 and the respondent/mill filed W.A.No.295 of 1996 and further the respondent/mill filed other three writ appeals viz., W.A.Nos.293, 294 and 296 of 1996 against the

common order in W.P.No.11039, 11040 and 11042 of 1995 and later the W.A.NO.293, 294 and 296 of 1996 have been dismissed as withdrawn and that W.A.No.123 of 1996 has been allowed and the order of the learned Single Judge has been set aside and W.A.No.295 of 1996 has been dismissed on the ground that the respondent mill has availed of the remedy of appeal before the appellate authority and all the contentions urged by the respondent/mill in these proceedings have been left open etc. The appellants Board has restored the electricity supply when the respondent/ mill has paid the first instalment of Rs.20 lakhs as consented on 28.06.1996 and the second instalment of Rs.20 lakhs is to be remitted on or before 20.08.1996. However, the mill after receiving the benefit of power supply filed a C.M.P.No.9525 of 1996 in W.A.No.293 of 1995 with a modification petition offering bank guarantee for the balance amount of Rs.150 lakhs and that the said CMP has been dismissed on 22.07.1996 and thereafter, the respondent/mill has remitted a sum of Rs.110 lakhs including the instalment amounts. Since the mill has not paid the instalments which has fallen due on 20.12.1996 the service connection has been disconnected on 20.12.1996 and that the balance amount due from the mill as per the order of this Court dated 20.06.1996 is Rs.90 lakhs.

5.05.However, the respondent/mill has filed W.P.No.19447 of 1996 suppressing all these facts and obtained an order in W.M.P.No.27692 of 1996 dated 24.12.1996 directing the mill to remit Rs.5 lakhs and get reconnection of electricity supply and the service connection has been restored on 25.12.1996 on payment of Rs.5 lakhs and that the appellants/respondents filed Writ Appeal No.52 of 1997 and this Court has allowed the writ appeal by setting aside the order dated 24.12.1996 passed in W.M.P.No.27692 of 1996 in W.P.No.19447 of 1996 and dismissed the writ. The last amount has been paid on 19.04.1997 and totally a sum of Rs.2 crores has been paid. The second appellant, the Chief Engineer (Distribution), Tamil Nadu Electricity Board, Salem Region has passed final orders in the appeal on 11.06.1997 confirming the assessment order of the first appellant/first respondent.

5.06.The respondent/petitioner has initiated a third round of litigation though the same may be raised before the appellate authority inasmuch as the contentions raised in the suit have been left open. As a consumer, the respondent /petitioner mill has entered into an agreement with the appellant/Board and that such agreement is renewable at every five years period and the last agreement has been entered into on 16.04.1992. The respondent/mill as per clause 10 of the agreement has agreed to abide by the terms and conditions of supply of electricity and its amendments.

5.07.On 11.05.1995, based on the intimation of the Executive Engineer, APTS, Salem, the Assistant Executive Engineer, Operation and Maintenance, Gugai Salem, along with other officials viz., Executive Engineer, APTS, Executive Engineer/O&M/Town, Salem, Executive Engineer/MRT /Salem and Assistant Executive Engineer/APTS/Salem and other staff entered the respondent/petitioner's mill in the early morning at 4.00 a.m. and that the proper intimation of intention to inspect the premises of the respondent/ petitioner mill was given by the Assistant Executive

Engineer, Operation and Maintenance, Gugai, Salem to the Factory Manager P.Balraj who was present then at the mill. The said notice was issued to the said Manager and he had signed the intimation notice. Both the Factory Manager and the electrician were present throughout the inspection. At the time of inspection all the electrical motors and machineries of the mill were functioning with the electrical supply of the Tamil Nadu Electricity Board. The Generators available in the respondent/petitioner's mill were not functioning. It was further noticed that in the trivector meter installed to measure the consumption of electrical energy by the mill, both the discs of the meter were found not rotating. In the normal circumstances, when the supply of electricity is being consumed by the consumer and the motors and the machineries were running the said discs in the trivector should be rotating in forward direction to enable the recording of the consumption. In this case, the discs were not rotating at all and it stood still. On further investigation it was found that the two numbers of copper hook wires of 3/4 ft length 8 SWG size, placed between the incoming and outgoing terminals of the metering set of Tamil Nadu Electricity Board. By this arrangement of fixing the artificial means, the metering set was bye-passed and the consumption of the electricity was prevented to be recorded by the trivector meter. The Electrician of the respondent/mill K.Muthusamy, gave a statement that the 2 numbers copper hook wires were fixed by him purposely to bye-pass the metering set to thief the electricity. The Factory Manager P.Balraj has given a statement that he was present during the inspection and has admitted in his statement that though the mill was running with electrical supply, the meter was not recording the same due to the bye-pass arrangement done by them.

5.08.A mahazar was prepared by the officers of Tamil Nadu Electricity Board wherein the observations were recorded both the electrician and the Manager, who were present throughout the inspection and witnessed all the details, had also signed the mahazar and received a copy of the same. Thereafter, a complaint was prepared and lodged with the Sub-Inspector of Police, Mallur Police Station by the Assistant Executive Engineer/O&M/Gugai, Salem on 11.05.1995. The FIR was prepared under Section 39(1) and 44 (1)(c) of the Indian Electricity (Tamil Nadu Amendment) Act for the offences of theft of electricity. Thereafter, the Sub-Inspector of Police along with his men together with Village Administrative Officer of Nilavarapatti and the photographer visited the petitioner mill and had a through inspection of the theft committed by the respondent/ petitioner mill. The Assistant Executive Engineer, M.R.T. Who was available along with the officials of the Board Board, demonstrated the modus operandi of the offence of thief committed by the mill to the police officials and the village Administrative Officer. The photographer was directed to take photographs of the bye-passing arrangements by which theft was committed. The police arrested the electrician and the manager and seized the materials evidences namely, metering set, the trivector meter, two copper hooks, wooden reaper about 90 cm length, a ladder about 10 ½ ft. length and accessories used for the said offence. The seizure mahazar was also witnessed by the Village Administrative Officer.

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5.09.After completing the process of inspection, the

respondent/mill was issued with a show cause notice dated 17.5.1995 by the EE/O&M/T/Salem. As per the said notice the respondent/mill was called upon to show cause within 7 days from the date of receipt of the notice, why the extra levy should not be collected. It was also made clear therein that if no reply was received, within the time stipulated or if the reply was not convincing, further action to collect the extra levy would be taken as per terms and conditions of supply and there is no illegality nor infirmity about the same. In so far as the respondent/mill is concerned, the inspection was carried on 11.05.1995 in the presence of representatives of the company and they have received the mahazar copy after giving a statement of their own. The representatives of the mill after having accepted the offence of theft have requested the department in writing to have electricity supply continued without disconnection. The Inspecting Officers found out the artificial means of dishonest abstraction of electrical energy the metering set during the time of inspection, were seized by police under mahazar with independent witnesses and were handed over to the Court by the Investigating Officer. Notices of intent to inspect was acknowledged by the responsible staff of the mill who has given confession as the artificial means were put in the circuit to bye-pass the meter by them. Mahazar indicating all the details were served by the inspecting officer and acknowledged by the responsible staff of the mill. Photographer were taken in their presence. On 24.5.1995 a conditional order for anticipatory bail was passed by this Court directing the respondent/mill to furnish a bank guarantee for Rs.1 crore. Taking into consideration of the report of the complainant officer, the FIR copy and other relevant records and the reply to the show cause notice, the SE/SEDC/Salem has come to the conclusion that the offence of theft of energy has been committed by the mill and on the basis of his findings, issued the assessment order in question.

5.10.The authority has considered the materials and explanations submitted by the consumer and recorded a finding. The theft of electrical energy is quite different from theft of material property. The reply dated 21.5.1995 to the show cause notice of the appellant is very elaborate, quoting extensively the provisions of law and decided cases. The show cause notice dated 17.05.1995 is for what has been deducted on 11.05.1995. The reply is dated 21.05.1995. The suppression of inspection and the presence of employees of the mill lead to an irresistible inference that the respondent/mill is raising false contentions. The respondent/mill in the course of hearing on 23.05.1997 contended through its counsel that it is not permissible to fill up any lacuna in the notice and order. It has been stated also that because the appellant has granted personal hearing the same will not cure the defect in passing of the order earlier. This Court, in W.P.No.11041 of 1995 by an order dated 02.01.1996, has held that the appellate authority is required to consider all the materials and also give a personal hearing.

5.11.In the letter dated 22.05.1995 the respondent/mill has alleged that the officer has obtained signatures from their employees in blank letterhead sheets of the company. The reply to the show cause notice, the very first paragraph reads as follows:

'... We do not admit that there was an inspection by the officers named by you....'

5.12.The appellate authority has perused the statement given by the Electrician and the Manager. The statements have been given in letterhead of the mill and seemed to have been written by another staff of the mill, who has signed and the same was witnessed by the EE/O&M/T/Salem, the officer, who issued show cause notice. The show cause notice is only a continuation of a process rather than an abrupt beginning. A show cause notice is given only to give an opportunity and to get the explanation.

5.13.The Section 49 of the Tamil Nadu Electricity Supply Act, 1948 is the source of power of the Electricity Board to prescribe the terms and conditions of supply which are binding on every consumer. The terms and conditions of the supply are statutory and valid. In the order dated 02.01.1996 in W.P.No.11041 of 1995, it is held by this Court that the clauses of the terms and conditions of supply of electricity are clearly traceable to Section 49 of the Electricity Supply Act and decided that the same are valid and conform to the Article 14 of the Constitution. In the present case, para 9.05 read with appendix VII clearly shows that the proper authority is obliged and required to determine whether theft has been committed or not and is required to record a finding that theft is committed or not.

5.14.The extra levy contemplated in para 9.03 (8.03 in new book) is one to be determined based on working of the formula. Therefore, it is to be seen that the enquiry contemplated by 9.05 (8.05 in new book) and the determination by the proper authority will refer only to the question as to whether theft has been committed or not with reference to the question of determining the quantum of damages, since it is only an arithmetical working on the basis of the formula specified in clause 9.02 (8.02 in new book). Moreover, in the order dated 02.01.1996 passed in W.P.No.11041 of 1995 filed by the appellant/Board, it is inter alia observed that

"Therefore I am of the view, that the first contention of Mr.Ravi, learned counsel for the petitioner, regarding para 9.05 of the terms and conditions of supply of electricity deserves to be rejected."

5.15.By Act No.39 of 1980 the Indian Electricity Act (Tamil Nadu Amendment) Act, 1980 the offences under Section 39, Section 39A and Section 44 of the Act have been made cognizable offence within the meaning of Code of Cr.P.C. and punishable with imprisonment of fine or both. The said Section has nothing to do with the extra levy to be collected by the Board in terms of the statutory terms and conditions of supply framed under Section 49 of the Electricity Supply Act, 1948. Moreover, Section 43 of the Indian Electricity Act, 1910, enjoins that 'the penalties imposed by Section 39 of Sections 40 to 47 (both) inclusive shall be in addition to and not in derogation of any liability in respect of the payment of compensation or in the case of a licence, the revocation of his licence, which the offender may have incurred.'

5.16.Furthermore, the respondent/mill has stated that under the agreement which it has entered into with the Board, especially clause-10 in the last agreement dated 06.04.1992, the respondent/mill

has agreed to pay only additional charges that may be levied by the Board, that too if an after the mill is found guilty of theft of energy. The proceedings visualised by the terms and conditions is an extra levy for the theft committed which is apart from the penal consequences contemplated by the Indian Electricity Act. Such a levy can be validity made by the officers of the Board. There is no illegality in it. The officers who are representatives of the Board are entitled to issue show cause notice, to pass orders and to hear appeals. The statutory terms and conditions read with clause 10 of the agreement will clearly mean that the board represented by such officers referred to in para 11 of the terms and conditions of supply of electricity are competent to take action. Once theft is deducted and determined under the rules, it does not lie in the mouth of wrong doer to question the quantum of punishment or consequences which arise out of an offence. Theft of energy constitutes an offence under Section 39 of the Indian Electricity Act, 1910 and is punishable in law.

5.17.The provision for appeal has been provided in clause 9.04 (8.04 in new book) of terms and conditions of supply and the Appendix VII, which is part and parcel of the terms and conditions of supply of electricity which reads that a consumer may file an appeal to the appellate authority within 60 days from the date of receipt of the notice after paying the extra levy. These provisions under Clause 9 including the appendix VI and VII were challenged to be invalid in W.P.No.11041 of 1995 before this Court and the same was rejected by the Hon'ble High Court in its order dated 02.01.1995 holding that the same were valid and vires. As a measure of penalty, the part time is deducted and the compensation has been worked and there is no arbitrariness.

5.18.By clause 10 of the agreement if a consumer is found indulging in theft of energy or any malpractice in respect of the use of electrical energy, he shall pay the additional charges as may be levied by the Board and in such an event, the Board has the right to disconnect the supply of electricity to its premises for such period as may be decided by the Board. Moreover, a supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. Added further, the production of the mill of yarn of different counts and variety were taken into consideration and the energy consumption visa-via the yarn production over a period of one year was arrived at. Accordingly, it was calculated that the mill should have consumed 1,06,82,116 units for the total production as against which the recorded unit bills were only 31,66,300/-. The respondent/mill has not given any return in regard to the use of other captive generators set and energy consumed by them from the Generator sets.

5.19.The Assessment officer also took into consideration the number of hours of interruption of supply in the G.N. Patty Fedder, from which the mill is fed. During the period for one year, as per the records of 230 K.V.S.S. was for 435 hours i.e. 18 days and 3 hours only during the 12 months period. However, the assessment has been made only for 300 days leaving 60 days for the holidays and other maintenance and unscheduled interruptions of power supply.

5.20.The respondent/mill contend that they have generating sets, the cost of generation of one unit of power using diesel generator works around Rs.3.40 and the said generator was not working when the inspection was done. In fact, there is no arbitrariness in the assessment made as per the provisions of clause 9.03 of the terms and conditions and extra levy worked out for 81,73,700 units and 1750 K.V.A. towards energy and demand charges. The appellate authority passed a reasoned order on 11.06.1997 confirming the impugned order of assessment. Full opportunity was given to the respondent/mill to put forth their views. The assessment made for preceding 12 months and extra levy demanded is reasonable. The respondent/mill has not made out a case for quashing the show cause notice dated 17.05.1995 and the same is legal and valid. The same has been issued as per the provisions of the terms and conditions of supply which has been enacted under Section 49 of the Electricity Supply Act.

5.21.Further, the order No.PR.No.240/1995 dated 26.05.1995 is valid and the same has been issued in pursuance of the terms and conditions of supply of the Tamil Nadu Electricity Board. Therefore, the writ petition challenging the order in PR.No.240/1995 dated 26.05.1995 and the final order of Chief Engineer/Distribution/Salem Region dated 11.06.1997 is liable to be dismissed. That apart, Clause 8 and Clause 10 of the terms and conditions of supply contained in Chapter 37, Schedule Part-I and appendix VI and VII in Chapter 39, titled Schedule Part-II in the Chapter 39, titled Schedule Part II in the terms and conditions of supply of electricity which relates to the theft of energy are valid and there is no illegality or infirmity in the same.

W.P.Nos.7417 and 7418 of 2000:

6.00.The writ petition W.P.No.7417 of 2000 is preferred by the petitioner mill praying for an issuance of writ of certiorari calling for the records of the second respondent relating to his order dated 20.03.2000 bearing Lr.No.SE/ CEDC/W/G1/AEE/AE/2/F.HT.M/S.Annamalai Cotton Mills 814/ 2000, and quash the same.

The writ petition W.P.No.7418 of 2000 is projected by the petitioner mill praying for an issuance of a writ of mandamus directing the respondents 1 to 3 to restore supply of electricity to the petitioner's mill bearing HT Service Connection No.30, forthwith.

Averments in W.P.Nos.7417 & 7418 of 2000:

7.00.The petitioner/mill is in existence since 1971 and has a High Tension (H.T.) power connection S.C.No.30 and that about 1000 workers are working in the mill and till 1995 there has been no complaint against the petitioner/mill from any statutory authority and in the year 1995, the relationship between the petitioner/mill and certain officers of the first respondent/Board at Salem especially one Mariappan, Assistant Executive Engineer became strained, on account of petitioner's refusal to comply with certain illegal demands made by them and on account of such enmity and after expressing an open threat to the directors of the petitioner mill such officers foisted a false case against the petitioner mill as if their squad inspected the mill on 11.05.1995 and found that there was theft of energy in the mill and a penalty of about Rs.9.4 crores was levied on the petitioner mill without any enquiry whatsoever by an

order dated 26.05.1995 and that the service connection to the petitioner mill was kept under disconnection and after some initial round of litigations held not properly framed and closed with liberty to take further proceedings, the petitioner/mill ultimately filed W.P.Nos.9026 to 9028 of 1997 and that in W.P.No.9026 of 1997 the petitioner had prayed for quashing of the show cause notice on the ground that it was bald and vague and in W.P.No.9027 of 1997 the petitioner had prayed for quashing the order of extra levy, as confirmed by the departmental appellate authority, on the grounds that there was a total violation of natural justice, there not having been a due enquiry before the passing of the order and the entire proceedings having been vitiated by bias and in W.P.No.9028 of 1997 the petitioner had prayed for declaring certain clauses in the terms and conditions of supply framed by the respondent granting to its own officers power to deal with theft cases and levy penalty as void, unconstitutional and invalid and on such reasoning the order of extra levy was quashed and the impugned terms and conditions were declared void, allowing W.P.No.9027 and 9028 of 1997 and W.P.No.9026 of 1997 was alone dismissed on the ground that it was unnecessary to quash the show cause notice when the order pursuant thereto itself was being quashed and the supply of electricity was restored to the above judgment and that the first respondent/Board filed appeal W.A.No.343 and 344 of 1998 against the said judgment in W.P.No.9027 and 9028 of 1997 and that the Honourable Division Bench granted a stay in W.A.No.343 of 1998 against W.P.No.9028 of 1997 only, it was subject to a further direction that such stay would not enable the Board to disconnect the power supply and this order was initially made on 11.03.1998 and subsequently made absolute on 24.03.1998 and that the officers of the Board at Salem became more inimical towards the petitioner after the above developments and openly expressed that they would teach a lesson to the petitioner.

7.01.The further case of the petitioner/mill is that during the midnight between ^{18th} and ^{19th} September 1999 certain officers of the respondent-Board including the Assistant Executive Engineer, Mariappan and the Executive Engineer O & M, Mr.K.Palaniappan accompanied by a police force entered the mill premises, locked the gate from inside and kept the mill and all the persons inside the mill under illegal custody till 1999 and during such seizure of the mill, no director of the petitioner mill was present in the mill and they commanded the workers to sign certain false statements as if the gang had discovered theft of energy in the mill and none of the workers have signed any statement and finally the said gang disconnected the power supply and brought through their men certain wooden reaper and wire and took some photographs to make some false appearances and thereafter they removed the meter, took one Srinivasan and one Basavalingam who are mill workers along with them in illegal custody and the gang comprised of nearly 35 to 40 persons who had come in more than seven vehicles. Only after the gang left the mill premises, the information of the illegal act was conveyed to the directors of the mill and immediately on receipt of such information the Managing Director of the mill enquired the workers, gathered the facts and issued a telegram on 19th itself addressed to the Chairman and to the Superintending Engineer, Salem of the first respondent complaining of this incident.

7.02. According to the petitioner/mill, the first respondent one Chockalingam, Assistant Executive Engineer, O & M, Salem who has also a member of the gang which committed the illegal act complained supra, preferred a false complaint to the local police station as if there had been theft of energy in the mill, specially making a false allegation that by such theft the loss suffered by the respondent was Rs.11.8 crores and that the said complaint filed on 19.09.1999 has been registered as FIR in Crime No.905 of 1999 on the same day and two workers, Srinivasan and Basavalingam were produced before the Magistrate concerned and remanded to custody on 20.09.1999 and that the petitioner/mill received a notice dated 19.09.1999 from the Assistant Executive Engineer of the first respondent that he had disconnected the supply to the petitioner's mill on 19.09.1999 for three months under clause 9.01 of the terms and conditions, alleging that the petitioner had committed theft for a second time and this notice dated 19.09.1999 had been despatched by the respondent only on 28.09.1999. The petitioner/mill after receiving the letter dated 27.09.1999 from the Superintending Engineer, Salem stating that the contents of the petitioner's telegram given on 19.09.1999 are totally false etc. After the petitioner/mill received a show cause notice dated 30.09.1999 from the Executive Engineer, O & M, Salem the third respondent herein making false allegation as if there was theft of energy in the petitioner's service connection and the said notice contains false allegations as if the matter was bye-passed in the petitioner's mill during midnight between 18th and 19th September 1999 and it was also stated that the loss caused by the alleged theft was Rs.13.11 crores and it was stated that the petitioner could represent their case on 15.10.1999 before the Superintending Engineer and to the show cause notice a reply dated 06.10.1999 was given by the petitioner's advocate addressed to the Executive Engineer, the third respondent herein with a copy of the Chairman of the first respondent, denying the charge of theft, etc. and praying for an impartial enquiry by an independent authority with a request to the Chairman to constitute such independent authority and when this reply was tendered in person by the petitioner's Managing Director at 11.00 a.m. On 07.10.1999 to the Executive Engineer, O & M, Salem he refused to receive the same and on such refusal was immediately informed by telegram dated 07.10.1999 itself by the petitioners counsel to the Executive Engineer and the reply was sent by R.P.A.D. Etc. and there has been no response from the Chairman of the first respondent who had already prejudged the case sent a communication dated 25.10.1999 asking the petitioner to appear for enquiry before him on 04.11.1999 and the tenor of his notice and the antecedent facts established that the whole department is biased against the petitioner.

7.03. Further, it is the case of the petitioner/mill that he attended the enquiry through counsel and the counsel for the petitioner received a letter from the legal cell of the first respondent stating that all correspondences in connection with detection of theft of energy will be sent only to the consumer and the petitioner sent a reply through his counsel to the said letter and on 10.12.1999 the petitioner received a letter from the second respondent stating that he was nominated as assessment authority to assess the compensation charges to the loss caused due to theft of energy and also informed the petitioner to appear before him on 21.12.1999 and on 21.12.1999 when the petitioner and the counsel went

to the office of second respondent to attend the hearing, they were informed by the Public Relations Officer of the respondent that the second respondent was not available and that the hearing had been postponed and on 23.12.1999 the petitioner received a notice dated 17.12.1999 from the second respondent stating that the hearing was postponed to 29.12.1999 etc. The enquiry officer namely the second respondent is biased. He has refused to give opportunity to the petitioner to cross examine the witnesses. The enquiry officer has expressed the view that the aim and scope of the enquiry is not to adjudicate whether theft was in fact committed or not by the petitioner. He has ruled that the scope of enquiry is confined to making assessment of extra levy on a prima facie view that theft was detected. No liability can be imposed on the consumer unless he is found guilty of theft or malpractice. On 17.02.2000 the petitioner's counsel was not permitted to effectively cross examine the witness. When he put questions relating to the alleged inspection and detection of theft, the second respondent refused to permit such questions, the witnesses refused to answer such questions and even they refused to record these and the second respondent declared that such questions were outside the scope of the enquiry and that such questions could be put only in criminal proceedings and the counsel for petitioner found the whole exercise a futile one and the very next day wrote a letter to the second respondent stating these facts.

7.04.A writ was prepared in the first week of March 2000 and filed on 06.03.2000 praying for the relief of prohibiting the second respondent from proceeding with the enquiry and the same was registered in S.R.Nos.18553 to 18555 of 2000 and the same was returned on 07.03.2000 for certain minor compliances. However, before the same could be represented, the petitioner received on 08.03.2000, an order of assessment dated 06.03.2000 passed by the second respondent imposing on the petitioner an extra levy of Rs.11,80,68,521/-. The second respondent in that order has falsely observed 1) that due opportunity was given to the petitioner and his counsel to cross examine the Board's witnesses; 2) that neither the petitioner nor their counsel had rebutted the statements of the Board's witnesses; 3) that no material evidence was produced by the petitioner to disprove the allegation of dishonest abstraction and consumption of energy and the second respondent has held that theft of energy by the petitioner stood proved. In the instant case, no theft has been committed at all and that the proceedings are vindictive and malafide and only to coerce the petitioner mill to come to terms with the Board in respect of an earlier case where this Court has rightly declared that the very provisions in the terms and conditions of supply authorising such extra levy as unconstitutional and void.

Counter Averments:

8.00.The writ petitions challenging the impugned order of the second respondent dated 20.03.2000 are to be dismissed on the ground of availability of an alternative remedy of filing an appeal before the appellate authority viz., Chief Engineer (Distribution) Erode Region in terms of clause 10.01 of the terms and conditions of supply of electricity which has statutory force and the said provision is contained in Chapter 37 Schedule Part I under the heading 'Violations and Theft of Electrical Energy' in the terms and conditions of supply

of electricity. The stand of the respondents is that the petitioner/mill for the second time has been involved in large scale theft of electrical energy which is not only against the interests of the Electricity Board but also against the public interest and the first instance of theft of electrical energy was deducted at 4 a.m. On 11.05.1995 and it was found that the petitioner was liable to pay a sum of Rs.9,43,87,324/- on account of theft and that the petitioner/mill filed a civil suit O.S.No.160 of 1995 on the file of Subordinate Judge, Salem and in I.A.No.511 of 1995 on 23.06.1995 the Civil Court has directed the petitioner to furnish bank guarantee for Rs.2 crores and also pay a sum of Rs.7,43,87,324/- and filed an appeal to the competent authority as contemplated under the terms and conditions of supply of electricity and later C.M.A.No.633 of 1995 has been filed by the petitioner which has been dismissed on 18.07.1995 by this Court slightly modifying the order passed by the Sub Court, Salem and in the civil miscellaneous appeal the writ petitioner has been directed to furnish a sum of Rs.5,18,84,084/- by means of Bank guarantee and a sum of Rs.4,25,03,240 as cash within one month and that in the anticipatory bail application filed by two of the Directors of the petitioner company, in Criminal O.P.No.3529 of 1995 this Court has imposed a condition while granting anticipatory bail that the petitioner should furnish a bank guarantee for a sum of Rs.1 crore apart from other personal sureties to be issued by the Directors and as against the orders in C.M.A.No.633 of 1995 the writ petitioner filed L.P.A.No.198 of 1995 and the writ petitioner mill also filed W.P.No.7556 of 1995 for the very same relief as sought for before the Sub Court, Salem and the said writ petition has been dismissed as not maintainable by this Court on 21.07.1995 and thereafter, the writ petitioner filed W.A.No.833 of 1995 challenging the judgment in W.P.No.7556 of 1995 and W.A.No.833 of 1995 has been dismissed by this Court by holding that the appropriate course for the petitioner is to file an appeal as per terms and conditions of supply of electricity and also permitted the writ petitioner to withdraw the civil suit pending before Sub Court, Salem.

8.01.Moreover, the petitioner/mill filed W.P.No.11039, 11040, 11041 and 11042 of 1995 questioning the validity of the assessment orders passed on 26.05.1995 and the show cause notice dated 17.05.1995 both of which were the subject matter of the civil suit and that W.P.Nos.11039, 11040 and 11042 of 1995 were disposed off on 28.8.1995 by this Court on the basis that the impugned orders subject matter of challenge in the writ petitions were appealable and that the writ petitioners ought to have agitated the matter by means of appeals against the said orders and in regard to the writ petition seeking relief of reconnection of electricity supply disconnected in respect of a first time theft, this Court has directed the petitioner mill to deposit a sum of Rs.10 lakhs within two weeks from 28.8.1995 and on such deposit, the supply has been directed to be restored and further direction has been issued to the petitioner to deposit a sum of Rs.100 lakhs within a period of three months and Rs.90 lakhs within a period of five months from 28.08.1995 and the appeal which was to be filed was directed to be kept pending till the writ petitioner complies with the conditions imposed by this Court etc.

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8.02.The main ground of attack of the petitioner/mill is that the

officers of the Electricity Board have no powers to adjudicate theft cases which is unsustainable in the light of Apex Court Judgment and consequently that the contention that no officer has been specified in the terms and conditions to adjudicate thefts of electricity and if so, by which person the theft has been committed etc. are also without any substance and that the terms and conditions of supply of electricity are statutory and wide enough and confers powers on the Officers as would be evident from the various terms and conditions to decide cases of theft of electrical energy and adjudicate all questions and the allegations of bias or malafides are without any substance and adequate opportunity has been given to the writ petitioner and that the writ petitioner has got an effective remedy of filing an appeal against the impugned orders and the earlier proceedings/judgment the writ petitioner will show that the proper course for the writ petitioner is to file an appeal instead of rushing before this Court and when allegations of bias were made against the enquiry officer appointed originally, the second respondent has been appointed as the Enquiry Officer and as assessing authority and that the theft of electrical energy has been properly examined and an enquiry has been conducted in a fair and reasonable manner and there has been no violation of any principles of natural justice.

8.03. After filing W.A.Nos.343 and 344 of 1998, the A.P.T.S./Salem on hearing that energy theft is again committed at the petitioner's mill inspected the H.T. Service connection No.30/I along with the Assistant Executive Engineer/O&M/ Gugai on 19.09.1999 after serving inspection and detected again an energy theft with clinching evidences by bypassing the H.T. Meter in set which was provided by the Electricity Board to record the energy consumptions and this was the second theft of electrical energy committed by the writ petitioner and the theft was deducted in the presence of the Mill Employee S.Srinivasan, Spinning Master and Basavalingam, fitter, in the early hours of 19.9.1999 and the mill employees who were present at the time of detection has not come forward to cooperate with the Board officials to give any statement regarding the theft detected and that a prosecution was launched by the Assistant Executive Engineer/O&M/Gugai Salem for illegal theft of energy and for the loss sustained by the Board to an amount of Rs.13,11,58,521/- with the Sub Inspector of Police, Mallur and the said complaint has been registered as Crime No.905/99 and that the employees Srinivasan and Basavalingam of the petitioner mill were remanded to custody on 20.9.1999 and in the meanwhile, as per the terms and conditions of supply and clause 9.01 service connection was disconnected on 19.9.1999 by serving necessary notice on 19.9.1999 itself for the theft of electricity second time and since the notices were refused to be received, the same has been affixed on the mill office in the presence of Village Administrative Officer, Nilavarapatty. Later, the petitioner/mill was served with a show cause notice on 30.09.1999 by the Executive Engineer/O&M T/Salem stating that there was theft of energy detected on 19.9.1999 at the petitioner's H.T. Service connection which is an offence punishable under Section 39(1) and 44 (1)(c) of the Indian Electricity Act and claiming compensation for the theft of energy worked out at Rs.13,11,58,521/- and the petitioner/ mill participated in the enquiry proceedings through its Advocate and they were afforded due and effective opportunity to put

forth their claims were given and the Enquiry Officer conducted the enquiry after affording opportunity to cross examine witnesses and concluded the proceedings and the assessment order dated 20.03.2000 was issued for a compensation of Rs.13,11,58,521/-. The action of the respondents cannot be said to be violative of Article 14 of the Constitution. The Tamil nadu Electricity Board has not prescribed any special form of appliance for utilising energy to the petitioner mill and only regular procedure has been followed in the matter of supply of electrical energy and that the impugned orders are legal and valid and the officers of the Board are only performing their statutory duty and they have no animosity against the writ petitioner who on the other hand wants to insulate itself after having committed all illegal acts and there are no merits in the writ petitions and therefore, prays for dismissal of the same.

W.P.No.6106 of 2000:

9.00.The writ petition is filed by the petitioner's company praying for the issuance of a writ of declaration declaring that paragraphs 8 and 10 contained in Chapter 37 titled 'Schedule Part 1' and Appendix VI and VII, contained in Chapter 38 titled 'Schedule Part II in the terms and conditions of Supply of Electricity framed by the first respondent are ultra vires the powers of the first respondent, void, illegal and constitutional and unenforceable in so far as it relates to the action initiated against the petitioner culminating in the impugned order of the second respondent dated 5.1.1999 in Lr.No.SE/KEDC/GL/A2/HT/APTS D 503.

Averments in W.P.No.6106 of 2000:

10.00.The petitioner is the manufacture of roofing sheets under the brand 'Bestroof' Asphalt Roofing Sheets with its factory at Chitramedu Village, Thimmasamudram Post, Kancheepuram. The petitioner has been supplied with High Tension Electricity Supply with a maximum demand of 235 KVA on and with effect from 23.9.1992. Since then, there has been no room for any complaint against the petitioner. During 1992, the average monthly consumption of the petitioner was 25,896 units with a maximum demand of 171 KVA and the average monthly bill was worked out to Rs.63,673/- and for the year 1993-94 the petitioner expanded its operations and its average consumption increased to 39937 units and the maximum demand was 177 KVA and the average monthly bill coming to Rs.44,501/-. For the year 1994, the average consumption, in view of its further expansion, had increased to 50,223 units with a maximum demand of 212 KVA and the average monthly bill for 1994 was RS.83,024/-. For the year 1995, the average monthly consumption worked out to 46,086 units with a maximum demand of 211 KVA and the average monthly bill was Rs.1,17,383 and that there has been uniform pattern of power consumption well within the maximum demand and sanctioned load.

10.01.While taking the reading for electrical energy, every month, it is either the Assistant Executive Engineer or the Junior Engineer who break open the seal of the meter, note down the meter reading and then reset it to (zero) '0' and put a fresh seal and sign it in the H.T. Meter Card that 'meter' resets into zero. This is reflected in the endorsement made in High Tension Meter Card which after noting down the meter reading reflects the endorsement that the meter has been reset to '0'. There was regular monthly inspection of

the meter. During 1995, the inspection was held on 27.12.1995 by the Assistant Executive Engineer and everything was found normal. For January 1996, inspection was conducted on 25.1.1996. The factory was having a weekly holiday and that there should be no consumption of electricity on that day. On 25.01.1996 no responsible staff member working in the petitioner's factory was present except one Amaldas an Electrical Foreman who was also brought from his residence by the officials of the Electricity Department. Subsequently, one Ravikumar, Director was summoned.

10.02. Based on the inspection, the petitioner received a show cause notice on 31.1.1996 informing the petitioner that there was theft of electrical energy in the service connection which has been reported and that the petitioner was called upon to reply the same. The petitioner has sent a reply on 05.02.1996 to the said show cause notice of the third respondent highlighting all the relevant facts and denying the fact of any tampering of seals or indulging in any act of theft of electrical energy. The petitioner filed W.P.No.1657 of 1996 challenging the said show cause notice and the action taken against the petitioner for theft of electrical energy and also highlighted all the facts before this Court including the uniform pattern of consumption of electricity. The said action was also questioned on the ground of being vitiated by colourable exercise of power. In the said writ petition, in W.M.P.No.2542 of 1996 by an order dated 13.2.1996, this Court was pleased to direct stay of the operation of all further proceedings pursuant to the notice dated 31.1.1996 of the third respondent including disconnection of electricity service connection. Subsequently, the main writ petition itself was taken up for final disposal by the Division Bench of this Court on 24.11.1997. This Court allowed the writ petition and quash the notice dated 31.1.1996. No further liberty was given to the respondent to take any fresh action and the above writ petition concluded the rights of parties with regard to the allegations of theft of electrical energy said to have taken place on 25.1.1996.

10.03. The petitioner also sought for connection of additional load of an extent of 150 KVA and since that was also not forthcoming, the petitioner has filed W.P.No.4445 of 1996 and this Court had directed the petitioner to deposit Rs.9 lakhs in 15 monthly equal instalments. This was done in the light of the pendency of the earlier writ petition involving allegations of theft of electrical energy and this writ petition that was also taken up by the Division Bench. In fact, the Electricity Board has also filed W.A.No.321 of 1997 against the order passed by the learned single Judge in W.M.P.No.7145 of 1996 in W.P.No.4445 of 1996 directing supply of additional load of 150 KVA on payment of Rs.9 lakhs in 15 monthly equal instalments. In the said writ appeal, the said order was also confirmed by the Division Bench and W.P.No.4445 of 1996 was also dismissed in the light of the petitioner complying with the interim orders. The petitioner was entitled to the refund of Rs.9 lakhs consequent upon the dismissal of W.P.No.4445 of 1996 and a legal notice was sent on 10.5.1998. As the respondents failed to sanction additional load of 150 KVA inspite of earlier interim orders passed in W.P.No.4445 of 1996 and confirmed by W.A.No.321 of 1997 the petitioner has preferred contempt application; but, however withdrew the same with liberty to file a fresh writ petition for effectuating

the supply of additional load of 150 KVA. The additional load as sought for was however sanctioned and accordingly, the writ petition once again came up before this Court for a mandamus for effectuating additional load of 150 KVA had become infructuous and the same was disposed of on 28.10.1996.

10.04. In respect of the very same subject matter of alleged theft reported on 25.1.1996, a fresh show cause notice was issued by the third respondent on 6.8.1998 alleging theft of electrical energy and tampering of seals in the door of the Meter Box and along with it certain enclosures were also enclosed. The petitioner had sent a detailed reply to the show cause notice dated 11.8.1998. The petitioner highlighted certain provisions of the terms and conditions of supply of electrical energy empowering the Board to make assessment had been found illegal in W.P.No.9026, 9027 and 9028 of 1997. Subsequent to the reply sent by the petitioner on 11.8.1998 the petitioner received a reply from the second respondent requesting the petitioner to appear for an oral enquiry on 28.11.1998 and the enquiry was held on 03.12.1998 and that the petitioner had clarified all the aspects by a detailed representation dated 8.12.1998. The petitioner adverted to the judgment in W.A.No.321 of 1997 and pointed out that no liberty has been given by the Division Bench to proceed afresh against the petitioner by issuing any fresh show cause notice and that judgment operates as res judicata. The petitioner has denied tampering of seals and also highlighted that the inspection was conducted on a holiday and there was more to read in between the lines and that the aspect of colourable exercise of power has been the subject matter in the earlier writ petition. The impugned order dated 05.01.1999 has been passed casually without considering any of the objection raised by the petitioner on merits, reiterating what was mentioned in the show cause notice and casually mentioning one of the explanations sent by the petitioner to the show cause notice dated 11.08.1998 and without adverting to the detailed reply submitted on 8.12.1998. The order of the Superintending Engineer finding the petitioner guilty of electricity theft and directing him to pay huge sums in monthly instalments was challenged before this Court in W.P.No.836 of 1999 on the ground that the order was ex facie illegal, arbitrary, unconstitutional apart from being barred by the principles of res judicata in the light of the judgment in W.P.No.1657 of 1996. The petitioner has reserved its right to challenge the validity and legality of the terms and conditions of supply of electricity if need be later etc.

10.05. W.P.No.836 of 1999 filed by the petitioner has been dismissed on 05.01.1999 on the ground that the petitioner has a right of appeal before the second respondent and directed the petitioner to move the appeal forum. The petitioner has filed W.A.No.135 of 1999 and the Hon'ble Division Bench has however by order dated 13.3.2000 dismissed the writ appeal leaving it open to the petitioner to pursue the statutory appeal as the matter involves disputed questions which cannot be gone into the writ jurisdiction.

10.06. The impugned action resulting in the order dated 05.01.1999 finding the petitioner guilty of theft of electrical energy and directing him to pay huge sums in monthly instalments certainly is

not only illegal but also contrary to the terms and conditions of supply of electricity as framed by the first respondent, more particularly paragraphs 8 and 10 contained in Chapter 37 titled Schedule Part I, and Appendix VI and VII, contained in Chapter 38, titled 'Schedule Part II and as such liable to be declared as ultra vires of the powers of the first respondent, unconstitutional, void, illegal and invalid and violative of Article 14 of the Constitution of India.

10.07. The first respondent is not empowered to pass the impugned order under any provisions of law or any Statutory Rule or Regulations during the relevant point of time when the action was initiated against the petitioner. Neither the Indian Electricity Act, 1910 nor the Electricity (Supply) Act, 1948 empowers any such power to the first respondent. No rule of regulation made under any of these two Acts, grants such power to the first respondent. In fact, Section 79(1) of the 1948 Act empowers the respondents to make regulations to set out principles governing the supply of electricity to non-licencees under Section 49. Assuming without admitting that the Board may make a regulation constituting authorities to adjudicate issues concerning theft of energy, the terms and conditions of supply of electricity framed without making such regulations to be read as part and parcel of the contract of supply framed by the Board authorising the first respondent to make such assessment is not either a statutory provision or a rule or regulation; it is a mere contractual stipulation. The said stipulation is contained in para 10 of the terms and conditions made available only in the year 1996 proclaiming as amended upto 31.8.1995. The same provision was contained in para 11.01 of the terms and conditions issued earlier. In both the cases, the second respondent is named as the authority to make assessment for violation of the conditions of theft of energy in H.T. Connections. The authority empowered to make such assessment does not imply or include an authority to adjudicate upon a disputed issue, whether in fact theft was a violation and this has been held in AIR 1987 SC 1369 and it is further held even if such a provision is assumed to imply such an authority also, such an authority cannot be sustained under law, since a party to the agreement cannot be an arbitrator to arbitrate in his own cause. The issue now raised is directly covered by the above decision. Therefore, it must be held that the second respondent has no legal authority to hold that the petitioner has committed theft of energy.

10.08. Any provision in the terms and conditions suggesting that an officer of the Board may make such adjudication and make such assessment would be an unilateral stipulation prescribed in a printed form without any meaningful option to the consumers to agree or not to agree for such stipulation, especially when the Board has the monopoly over the supply of electricity. Hence, it should be held that such a stipulation is unconstitutional and opposed to public policy.

10.09. Even according to the terms and conditions the question of assessment of extra levy for theft of energy will arise only after the consumer is found to be guilty of such theft within the meaning of Indian Electricity Act, 1910. Such a finding under the said Act can be rendered only by a First Class Magistrate. Thus it is so

implied clearly by the opening paragraph in the terms and conditions relating to theft of energy and extra levy and this is para 8 in the latest terms and conditions and para 9 in the earlier terms and conditions. In any event, the judgment of the learned Single Judge declaring the provisions contained in the terms and conditions of supply of electricity empowering the extra levy for theft of electricity energy as ultra vires, illegal, void and unconstitutional and would squarely apply to the case of the petitioner, notwithstanding the pendency of the appeals against the said judgment. The initial defect crept in, in the proceedings cannot at all be cured by subsequent amendments.

10.10. The action of the second respondent in finding the petitioner guilty of electricity theft and imposing extra levy of huge sums in the light of provisions contained in the terms and conditions of supply of electricity is unsustainable and such conditions have been held to be ultra vires and illegal.

Contentions of the Appellants:-

11. According to the appellants/Electricity Board, a search was conducted in the respondent/mill on 11.05.1995 in the early hours at 4.00 a.m. in the morning, the presence of those in charge of operations of the mill including the Electrician Muthuswamy and manager Balraj and they are categorically stated in the letter addressed in the letter head of the mill on 11.05.1995 itself that they were responsible for the tampering of the meter and ensured that electrical energy consumed was not properly metered and they are made categorical statement to the effect that they illegally extracted electrical energy and that the search and inspection of were done only after due intimation to the Manager of the factory who had signed in the notice and it was found in their presence that in the trivector meter installed to measure the consumption of electrical energy by the mill, both the discs of the meter were found not rotating and it was found that there was two numbers of copper hook wires of $\frac{3}{4}$ ft length 8 SWG size, placed between the incoming and outgoing terminals of the metering set of Tamil nadu Electricity Board and that the Electrician has given a categoric statement that the two copper hook wires were fixed by him purposely to bypass metering set so as to prevent electrical energy from being recorded by the trivector meter and that the theft of electrical energy taken was confirmed by the factory manager who had categorically stated that the meter was not recording the same due to bypass arrangements made by them and that the statements were duly recorded and the copies of the recorded statements were furnished to the above said two persons in charge of the affairs of the mill and photographs were also taken by the police with the Tahsildar as evidence to prove the factum of theft and in the reply to show cause notice the respondent/mill has disowning the statements made on 11.5.1995 and that show cause notice was merely a continuation of the fact and intimation about action to be taken in accordance with the terms and conditions of supply which have statutory force and that the respondent/mill has entered into an agreement with the appellants/Board for supply of electrical energy and that the show cause notice issued by the assessing authority on 17.05.1995 though not elaborate was given consequent upon the inspection and that the regional authority confirmed the demand for Rs.9.43 crores by order

dated 26.5.1995 after which number of writ proceedings were initiated by the mill and that this Court in its order dated 20.06.1996 in W.A.Nos.123 and 293 to 296 of 1996 at para 15 has inter alia observed that "the common order passed in W.P.No.11039, 11040 and 11042 of 1995 based on consent enables the writ petitioner (respondent/mill) to urge all its contentions before the appellate authority and having agreed to adopt that course, which is available in law the petitioner (mill) cannot continue the proceedings in W.P.No.11041 of 1995 and put forward some of the contentions, which arise in the appeal before the appellate authority. In the circumstance of the case, the only order that could be passed in the writ petition in W.P.No.11041 of 1995 is to dismiss the same on the ground that the writ petitioner has already willingly availed of the remedy of appeal before the appellate authority and leave open all the questions raised by its so that they can be decided in the appeal etc. resultantly, dismissed the W.A.No.295 of 1996 on the only one ground that W.P.No.11041 of 1995 was not maintainable after passing of the consent order in W.P.No.11039, 11040 and 11042 of 1995 and has granted permission to the writ petitioner (mill) to urge all the contentions before the appellate authority etc. and after affording a reasonable opportunity the appellate authority has passed a final order on 11.06.1997 confirming the assessment of the original authority dated 26.05.1995 and that this aspect of the matter has not been looked into in proper perspective by the learned Single Judge and therefore, the same needs to be corrected in appeal.

12.The learned counsel for the appellants contends that the plea of the respondent/mill that there has been a violation of principles of natural justice at the first stage of hearing is without merit because of the fact that mahazar reports, statements of consumers representatives obtained at the spot, photos of material objects and the presence of V.A.O. as witness exhibit the factum of theft and in any event, the respondent/mill was provided with all opportunities as directed by the Division Bench of this Court and the test of prejudice is only the final determinative factor.

13.The learned counsel for the appellants in support of his contention that there is no rule of natural justice that at every stage of person is entitled to a personal hearing cites the decision in F.N.Roy V. Collector of Customs, Calcutta and others A.I.R. 1957 S.C. 648 at page 649 whereby the Hon'ble Supreme Court has held as follows:

"There is no rule of natural justice that at every stage a person is entitled to a personal hearing. Moreover when the appeal against the orders of the Customs-Authorities was filed beyond limitation, and the Appellate authorities dismissed the appeal as barred by limitation without hearing the appellant, there is no violation of the rule of natural justice."

14.He also relies on the decision in J.Rao Assistant Collector of Customs and others V. Bibhuti Bhushan Bagh and another (1989) 3 SCC 202 wherein the Hon'ble Supreme Court has inter alia observed that 'an affected person has no right to be informed about material collected against him in investigation which is still in process.'

15. Yet another decision in M.P. Electricity Board, Jabalpur and others V. Harsh Wood Products and another JT 1996 (5) S.C. 434 has been relied on the side of appellants to the effect that in case of theft of electricity and FIR has also been lodged and meter has been found tampered with and disconnection etc. the Hon'ble Supreme Court has inter alia held that 'in view of the conditions to which the respondents had agreed at the time of installation and also the prima facie conclusion read by the authorities, it was not necessary to give further hearing of the respondents and that the action taken by the appellant is not violative of Articles 20(1), 14 of the Constitution and principles of natural justice.'

16. The learned counsel for the appellants/Electricity Board contends that the terms and conditions of electricity supply are statutory in character and not merely a contractual one and that the appellants/Board as the power to assess and levy penal damages and in this regard Section 49 of the Electricity (Supply) Act, 1948 enjoins the Board to make provisions for adjudication and if anyone has indulged in malpractice the Board has a right to levy an additional penalty and that if the Board exclusion of theft of energy prima facie then it is not incumbent on the part of the Board to give a further opportunity to the consumer and that the action initiated by the Electricity Board is not in violation of principles of natural justice and moreover, when the Board's officials determine the matter of energy theft through a formula for provisional assessment determined by the contract, the same is not in violation of the principle of an individual being a Judge of his own cause and to lend support to his aforesaid contentions, he relies on the decision in Hyderabad Vanaspathi Limited V. A.P.State Electricity Board and Others (1998) 4 SCC 470 wherein the Hon'ble Supreme Court has observed that 'Section 49 does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing were entered into with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.'

17. Moreover, in the aforesaid decision at page 471 the Hon'ble Supreme Court has held as follows:

"27. Section 49 empowers the Board to supply electricity on "such terms and conditions as it thinks fit". It may also frame uniform tariffs. We have found that the terms and conditions of supply are statutory in character. They can be invalidated only if they are in conflict with any provision of the Act or the Constitution. The only limitation in that section is that the Terms and Conditions of Supply should be subject to the provisions of the Act. Clause 39 does not violate

any provision in the Supply Act. It is the statutory duty of the Board to arrange for the supply of electricity throughout the State and for transmission and distribution of the same in the most efficient and economical manner. For that purpose it has necessarily got to prevent unauthorised user, pilferage or malpractices by the consumers. Hence the necessary safeguards have to be provided as part of the conditions of supply so that the consumers will be bound by them. While on the one hand, the Board has to recoup the loss suffered by such pilferage or other malpractices, it has also on the other got to stop immediately the continuation thereof. Hence the Terms and Conditions of Supply have to provide for compensation as well as immediate disconnection. For ascertaining the loss and fixing the compensation, a uniform procedure has to be framed and a machinery constituted. Clause 39 is only doing that. Every consumer is made fully aware of the said terms and he signs the contract only on that basis. He gives an undertaking in that contract that if he is found indulging in any malpractice etc. he shall pay additional charges as may be levied by the Board and that the Board have the right to disconnect supply of electricity to his premises for such period as may be decided by the Board.

No doubt, clause 39.10.6 provides that the order on appeal shall be final subject to clause 39.11 and not liable to be questioned in any court of law. Similarly, clause 39.11 makes the order of the Chairman or his nominee final and not liable to be questioned in any court of law. But learned Senior Counsel for the Board that the orders are subject to judicial review and the jurisdiction of courts cannot be taken away by the clause. The trial court and the High Court have in this case upheld the jurisdiction of the civil court to entertain the suit and consider the validity of the orders passed by the Board against the consumers."

18. In this connection, it is also relevant to recall the observations made by the Hon'ble Supreme Court in the aforesaid decision at para 35 which runs as follows:

"provisions in clause 39 do not contravene the provisions of the Electricity Act. The provisions of the Electricity Act provide for a different situation. Clause 39 will come into play whenever there is malpractice or pilferage on the part of the consumer or a fraud played by the consumer. The Electrical Inspector has no jurisdiction to deal with those matters. He can be approached

only when there is a defective meter or any defect in wires, fittings, works or apparatus. As regards clause VI of the Schedule to the Electricity Act, it is not applicable unless distribution mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced. The provisions of Section 26 of the Supply Act exclude the applicability of clauses I to V of the Schedule to the Board. Hence clause VI of the Schedule cannot by itself apply and that is why the second proviso to Section 26 clarifies the position that the provisions of clause VI of the Schedule shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. The records before us do not disclose any pleading on the part of the consumers that the requirements of the second proviso to Section 26 have been satisfied. No question has been raised in that regard before the trial court. In the absence of a specific pleading to that effect it cannot be presumed that clause VI of the Schedule would apply. Even assuming that clause applies, it will not alter the situation. The difference or dispute referred to in sub-clause (3) of clause VI will not cover fraudulent malpractice or pilferage. A perusal of the said sub-clause makes it evident that the matter shall be referred to an Electrical Inspector only in cases of defects mentioned therein and not otherwise.

19. Further in the aforesaid decision of the Hon'ble Supreme Court at para 43 it is observed as follows:

"43. The Principle "nemo judex in causa sua" will not apply in this case as the officers have no personal lis with the consumers. They are similar to income tax or sales tax officials. There is nothing wrong in their adjudicating the matter especially when the consumers may be represented by an advocate and the formula for making provisional assessment is fixed in the clause itself. The argument advanced that the Board has recently deleted the provision enabling the consumer to be represented by a power-of-attorney agent and that the consumer is thereby deprived of the assistance of an expert which may be required in technical matters cannot be accepted. When the consumer is represented by a lawyer, he can certainly get such assistance as may be needed from a technical expert. It is stated by the Board's counsel that the provision was deleted as there was frequent misuse of the same. Whatever may be the reason for deleting the

provision, the existing part of the clause enables the consumer to be represented by an advocate. That is sufficient safeguard for the consumer."

20.The contention of the learned counsel for the appellants is that after the decision of the Hon'ble Supreme Court in Hyderabad Vanaspathi Limited V. A.P.State Electricity Board and Others in(1998) 4 SCC 470 wherein the power of the Andra Pradesh State Electricity Board to impose terms and conditions for supply of electricity including the power to electricity board's officer's to adjudicate the case of theft of electrical energy has been upheld, it is not open to the respondent/mill to question the terms and conditions of supply of electricity relating to the powers of officers and procedure adopted in arriving at the extra levy amount towards compensation in respect of deduction of theft of electrical energy and further that the principles laid down by the Hon'ble Supreme Court will squarely apply to our present case on hand and therefore, prays for dismissal of the writ petition Nos.9027 and 9028 of 1997 filed by the respondent/mill.

21.Continuing further, the learned counsel for the appellants/Electricity Board submits that the object of criminal trial under Section 39/44 of the Electricity Act is to punish the accused and the outcome of the criminal trial has no relevants and baring in regard to the assessment under the tariff of the value of the electrical energy stolen and that in the instant cases on hand, the respondent/mill have agreed to go for appeal before the appellate authority and their consent has been recorded by this Court in the common order dated 28.08.1995 made in W.P.No.11039, 11040 and 11042 of 1995 and further in W.A.No.123 of 1996 dated 20.06.1996 the respondent/mill has opted to go for appeal and therefore, it is not open to the respondent/mill to challenge the show cause notice and the assessment order in the eye of law.

22.The learned counsel for the appellants/Board cites the decision in J.M.D. Alloys Ltd. V. Bihar State Electricity Board and others in (2003) 5 SCC 226 wherein the Hon'ble Supreme Court at para 12 has observed as follows:

"12. The relevant part of the tariff quoted above shows that in the cases of theft of electricity or dishonest abstraction of electrical energy, the assessment for compensation has to be done on the basis of a formula wherein 'D' stands for number of days for which the pilferage took place and where there is no possible evidence to establish the period, this factor can be taken to be equivalent to 180 days. Similarly, in a case where connected load is more than the sanctioned load, the assessment charge has to be done on the basis of a formula where 'C' stands for six months or the number of months or part thereof elapsed from the date of connection/installation, whichever is less. Therefore under the tariff in both the cases the period can be taken as 180 days or six months. It

is on the basis of this formula that the assessment for consumption of units has been done for 180 days. In Hyderabad Vanaspathi Ltd. v. A.P. SEB² it has been held that the terms of conditions for supply of electricity to consumers notified by the Board in exercise of power under Section 49 of the Electricity (Supply) Act, 1948 and made applicable to all consumers availing supply of electricity, are statutory in character. This being the legal position, the Electricity Board in our opinion rightly applied clause 16.9 of the tariff and there is no infirmity in the assessment made and the bill prepared in pursuance thereof.

23. Moreover, in the aforesaid decision at para 15, 16 and 17 it is observed as follows:

"15. In Apparel Export Promotion Council v. A.K. Chopra⁵ Chief Justice Anand held as under: (SCC p. 771, para 17)

"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

16. There is no dispute that the Chief Engineer issued notice to the petitioner mentioning all the relevant facts to which the petitioner gave a reply. The petitioner was also afforded an opportunity of hearing and it appeared through a counsel, who made submissions on two days and thereafter the Chief Engineer passed the order. As discussed earlier, the Chief Engineer has taken into consideration relevant factors and the findings recorded by him are clearly borne out from the material available before him. It cannot be said that the order passed by him is unreasonable or perverse in any manner. The High Court therefore rightly took the view that the order passed by the Chief Engineer that the compensatory bill is to be prepared in accordance with clause 16.9 of the tariff could not be interfered with in a writ petition under Article 226 of the Constitution.

17. Bihar State Electricity Board feels aggrieved

by that part of the judgment and order of the Division Bench of the High Court by which it has been held that the surcharge cannot be levied at thrice the rate per unit and has accordingly filed Civil Appeal No. 8395 of 2002. Shri V.R. Reddy, learned Senior Counsel for the Electricity Board has submitted that the cost of a unit of electricity is not fixed and on the contrary it is dependent upon the fuel surcharge. The formula for calculating the fuel surcharge is a long and complicated one and is given in clause 16.10.3 of the tariff. A host of factors have to be taken into consideration in calculating the fuel surcharge and they depend upon many variables. Shri Reddy has submitted that since the surcharge has necessarily to be taken into consideration and has to be added in the cost of electricity and, therefore, in accordance with Part (III) of clause 16.9 of the tariff, it should also be assessed at three times the rate per unit. We are unable to accept the contention raised. Clauses 16.9 and 16.10.3 are separate and distinct clauses in the tariff. Clause 16.9(A) lays down the formula for calculating the value of the electrical energy abstracted or consumed by a consumer by exceeding the contracted load or by creating obstruction in running of meter. Part (III) of this clause deals with method of charging the assessed units and sub-para (a) thereof lays down that the consumption so assessed shall be charged at thrice the rate per unit of the tariff applicable to the consumer excluding the consumption recorded by the meter and the latter shall be charged at the appropriate tariff rates. Clause 16.10.3 is a separate clause which deals with fuel surcharge and it nowhere lays down that this additional surcharge will also be levied at thrice the rate per unit of the tariff. The two clauses, namely, clauses 16.9 and 16.10.3 have to be read separately and there being no specific provision for assessing the fuel surcharge at thrice the rate per unit, it is not possible to hold that in such a case the fuel surcharge should also be charged at thrice the rate per unit."

24. In regard to the plea of natural justice the learned counsel for the appellants relies on the decision in *Canara Bank V. Debasis Doss* in 2003 (4) SCC 557 = J.T. 2003 (3) SC 183 at 185 and 186 wherein the Hon'ble Supreme Court has inter alia observed as follows:

"21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the

principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo iudex in causa sua" or "nemo debet esse iudex in propria causa sua" as stated in Earl of Derby's case that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse iudex in propria causa, quia non potest esse iudex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et iudex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acqum licet dixerit, haud acqum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswell's case (Co Rep at p.52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

27. It is to be noted that at no stage the employee pleaded prejudice. Both learned Single Judge and the Division Bench proceeded on the basis that there was no compliance with the requirement of Regulation 6(18) and, therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(18) has not been correctly interpreted, the conclusions regarding prejudice are indefensible.

28. It is further to be noted that case of the parties on merits was not considered by learned Single Judge or the Division Bench. Notwithstanding the fact that there was no

consideration of the respective cases, learned Single Judge directed examination of the documents by the expert.

29. The inevitable result is that the judgment of the Division Bench confirming that of the learned Single Judge has to be quashed so far as it relates to the question of violation of principles of natural justice. But that is not the end of the matter. There was no consideration of the merits of the case as noted above. It would be in the fitness of things to direct examination of the documents by an expert in terms of learned Single Judge's order. The employee shall file originals of the documents on which he relies upon, of which copies were placed before the High Court. The appellant Bank shall file originals of the documents on which reliance was placed, if not already done. If the government expert is of the view that documents produced by the employee are forged/fabricated or not authentic the order of dismissal shall stand. If, however, the report of the expert is that the documents produced by the employee are genuine, the order of dismissal has to be vacated. In case the originals, as directed above, are not filed by the employee or the Bank, then the High Court shall pass necessary orders, upholding the order of dismissal or setting aside the order of dismissal, as the case may be. No other point shall be considered by the High Court. The matter shall be heard by the Division Bench by restoration of the writ appeal."

25. The learned counsel for the appellants submits that the tampering with the meter by artificial means is to prevent the registering of supply of electrical energy and therefore, there is a presumption that the consumer is responsible for that action and in support of his contention he relies on the decision in Jagannath Singh V. B.S.Ramasamy and another in AIR 1966 S.C. at 849. He also cites the decision M.P. Electricity Board, Jabalpur and others V. Harsh Wood Products and another in AIR 1996 S.C. At 2258 wherein the Hon'ble Supreme Court has held that 'in regard to the demand raised on detection of pilferage, disconnection of electricity without notice in such cases is not illegal and that the consumer is not entitled to the opportunity of hearing before disconnection.' A consumer found prima facie to have committed theft of electricity and hearing before disconnection is not necessary in view of the agreed conditions of supply and prima facie conclusion of theft and Section 24 of Electricity Act, 1910 stipulating notice not applicable to a case of pilferage of electricity and order of disconnection is not violative of Articles 20, 14 of the Constitution.

26. He also cites the decision in Loharu Steel Industries Limited V. Collector of Central Excise in 1993 (66) E.L.T. 179 (Kar.) wherein it is inter alia observed that 'the show cause notice is issued under

Section 11A of the Central Excises and Salt Act, 1944 by the collector on the grounds of suppression of facts of production and clearance from the department with an intention to evade payment of excise duty. As per the proviso to Section 11A(1), the Collector is competent to issue show cause notice on the ground of suppression of facts. Therefore, the show cause notice does not suffer from lack of jurisdiction. Certiorari jurisdiction is not intended to by-pass the statutory provisions. There is not even a determination made about a liability of the appellant. The facts stated in the show cause notice are yet to be determined after the cause is shown and the evidence, if any, adduced by the appellant. It is a different matter after a written statement is filed and evidence is produced, the Collector may come to a different conclusion that the suppression is not proved and may close the proceedings. But it is not possible to hold as per the contents of the show cause notice that the Collector has no jurisdiction to issue such a notice. Therefore, extraordinary jurisdiction under Article 226 is not to be exercised.'

27. The Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity Clause 8.00 speaks of Theft of Energy and Extra Levy and 8.01 and 8.02 are as follows:

"8.01 Any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means for such abstractions shall be prima facie evidence of such dishonest abstraction. Illegal restoration of supply to a disconnected service connection will fall under this category.

8.02 Extra levy for theft of energy will be made for a period of 12 months or from the date of service connection to the date of detection, whichever period is less at the rates given below:-

(i) For Energy:-

(a) Low Tension Service

Connection:-

Highest Low Tension tariff rate x 3,
The charges arrived at will be rounded off to the next higher rupee.

(b) High Tension Service Connection:-

Highest High Tension Tariff rate x 4.
The charges arrived at will be rounded off to the next higher rupee.

(ii) For maximum demand: (In High Tension Service Connection):-

Highest High Tension tariff rate for maximum demand x 4.

to a disconnected service connection will be made for a period of twelve months immediately preceding the date of detection of the violation or for the period from the date of disconnection of the service connection to the date of detection of the illegal restoration, whichever period is less, at the rates given above etc."

28. Further, the clause 10.00 refers to the Officers authorised to inspect service connection, issue show cause notice, make assessment and functions as Appellate Authority in cases of violation or theft of energy which is as follows:

Sl. No.	Type of Service Connection	Officers		Authorise	As Appellate Authority
		To Inspect	To issue show-causes notice	To make Assessment	
1	Low Tension service connection including temporary service connection.	Any officer not below the rank of Junior Engineer. Grade II.	Assistant Executive Engineer	Executive Engineer	Superintending Engineer
2	High Tension service connections including temporary service connection	Any Officer not below the rank of Junior-Engineer Grade II	Executive Engineer	Superintending Engineer	Chief Engineer

29. Further, clause 11.01 deals with the memorandum of appeal, if a consumer desires to prefer an appeal mentioned in clauses 6.03 and 8.04 of this schedule etc. The clause 12.00 refers to 'Disposal of Appeal' and 12.01 refers to the manner in which the appellate authority will dispose of the appeal, after considering the memorandum of appeal and the material placed before him by the appellant and other materials pertaining to the enquiry etc. As a matter of fact, clause 13.01 refers to the Power of Chief Engineer/Chairman who may suo moto call for and examine the records of any order passed or proceedings recorded by the assessing authority or appellate authority for the purpose of satisfying himself regarding the prosperity or legality or such orders or proceedings and may pass such order in reference thereto as he may think fit etc. 13.02 speaks of the Chairman's suo moto powers have been exercised by the Chief Engineer.

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Contention of the Respondent:

30. Per contra, the learned counsel for the respondent/ mill contends that the show cause notice dated 17.05.1995 issued by the fourth appellant is a bald one and the same does not contain full material particulars in regard to the theft of energy as alleged and therefore, there has been a violation of principles of natural justice and even in appeal no fresh enquiry was conducted and there was a failure of principles of natural justice and the defect of failure of principles of natural justice in the trial stage cannot be cured later even by granting a de novo enquiry at the appellate stage and in support of his contention he relies on the decision The Divisional Engineer, etc. and another V. Mangalakshmiammal 1997 Writ L.R. 417 wherein this Court has inter alia held that 'Failure to afford opportunity to respondent inspite of his explanations, held was contrary to positive directions given in earlier orders and attitude of public servants in disobeying orders of Court deprecated and where an authority makes order in exercise of a quasi judicial function, it must record its reason in support and the impugned order held, was passed in violation of principles of natural justice.' He also cites the decision Gajanan Visheshwar Birjur V. Union of India and others (1994) 5 SCC 550 wherein the Hon'ble Supreme Court has among other things observed that 'the order of confiscation affects not only fundamental right of the petitioner to carry on his occupation and business but also his fundamental right of freedom of speech and expression (including his freedom to propagate the thoughts and ideas which he thinks are in the best interest of this nation). In such a case, it was required of the officer to point out which book contains words, signs or visible representations which are likely to incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area or that they attract any of the other clauses in Notification No.77. Absence of such specification both in the show-cause notices and the final orders must be held to vitiate the action taken.'

31. He also presses into service the decision Lal Babu Hussain V. Electoral Registration Officer 1995 AIR SCW 1254 wherein the Hon'ble Supreme Court in regard to the deletion on the ground of suspicion about citizenship has observed that 'hearing would not be meaningful unless basis for the suspicion is disclosed.' Yet another decision of Hon'ble Supreme Court in Institute of Chartered Accountants of India V. L.K.Ratna and others AIR 1987 Supreme Court 71 has been relied on the side of respondent/mill to the effect that 'in fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under S.22 A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding.' He also

draws the attention of this Court to the decision in H.L.Trehan V. Union of India and others AIR 1989 Supreme Court 568 wherein the Hon'ble Supreme Court has inter alia held that "a Post-decisional hearing will not cure defect of not affording pre-decisional hearing.'

32.Moreover, the learned counsel for the respondent/ mill contends that since the respondent/mill has been acquitted in a criminal case in C.C.No.143 of 2004 by the Judicial Magistrate No.VI, Salem its essential and necessary to declare that all the proceedings arising out of the same allegations stand terminated as per the decision reported in (1999) 3 SCC at page 679 in Caption M.Paul Anthony V. Bharat Gold Mines Limited and in the decision G.M.Tank V. State of Gujarat and others (2006) 5 SCC 446.

33.In the aforesaid decision G.M.Tank V. State of Gujarat and others (2006) 5 SCC Supreme Court Cases 446 at page 447 the Hon'ble Supreme Court has held that 'in this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same.'

34.The learned counsel for the respondent/mill cites the decision in Uttaranchal Road Transport Corporation and others V. Mansaram Nainwal (2006) 6 Supreme Court Cases 366 at page 370 wherein the Hon'ble Supreme Court has inter alia held that 'the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in (Sidhana case) (1997) 4 SCC 385 and as the High Court had not dealt with the factual scenario and as to how (Anthony case) (1999) 3 SCC 679 helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration etc. He also places reliance on the decision Hindustan Petroleum Corporation Limited and others V. Sarvesh Berry (2005) 10 SCC 471 at page 472 wherein the Hon'ble Supreme Court has inter alia observed that 'it is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law.'

35.He also cites the another decision Noida Entrepreneurs Assn. V. Noida and others 2007 (3) CTC 211 at page 212 wherein the Hon'ble Supreme Court has among other things observed that 'enquiry in Departmental proceedings relates to conduct or breach of duty of delinquent officer to punish him for his misconduct defined under relevant statutory Rules or Law and that the strict standard of proof or applicability of Evidence Act stands excluded in Departmental proceedings.' He further draws the attention of this Court to the decision Pandiyan Roadways Corporation Limited V. N.Balakrishnan (2007) 9 SCC 755 at page 756 wherein the Hon'ble Supreme Court has observed that 'where a procedural provision merely embodies principles of natural justice, in which case whether the principle has been complied with will depend on the fact situation obtaining in

each case and lastly, ordinarily, consequences flowing from contravention of a statutory provision with an imperative character have to be given effect to and the application of a statute or principle of law, however, may vary from case to case.'

36. Added further, the learned counsel for the respondent/mill cites the decision General Manager, UCO Bank and another V. M. Venuranganath 2007 Indlaw SC 1298 wherein the Hon'ble Supreme Court has observed that in appeal against the High Court's judgment has inter alia that 'a manual on Disciplinary Action and Related Matters to UCO Bank governed the case and not Regulation 15(2) of the United Commercial Bank (Conduct and Discipline and Appeal) Regulation, 1976 and therefore, the High Court was justified in holding that because of Clause 22(8), the respondent was entitled to all benefits to which he would have been normally entitled, had he been on duty etc.' He also relies on the decision P. Karuppaiah V. The Presiding Officer, Industrial Tribunal, Chennai 2007 (1) CTC 489 wherein this Court has inter alia held that 'question of backwages will be considered if Department takes any disciplinary proceedings against the appellant and the appellant failed to report for duty due to his own conduct and he has not attended work by virtue of his involvement in criminal case and therefore, denial of backwages from 21.7.1994 to 1.9.1999 is not contrary to standing order.'

37. Moreover, he cites the decision Municipal Corporation of Delhi V. M/s. Ajanta Iron & Steel Company (Pvt.) Ltd., AIR 1990 SC 882 whereby the Hon'ble Supreme Court has inter alia held as follows:

'... Besides, the service of notice is a prerequisite for disconnection, and the appellant can not be allowed to go back upon its words and refuse the consumer the benefit of notice as contemplated by the agreement. The learned counsel for the appellant urged that the Delhi Electric Supply Undertaking will seriously suffer if this view is upheld. We do not understand as to what is the difficulty in the way of the appellant to serve a notice on the consumer before discontinuing the supply. It has to be appreciated that the licensee undertaking is performing a public duty and is governed by a special statute and the law also contemplates service of a notice before disconnection of supply of electricity.'

38. Furthermore, he also relies on the decision State of Karnataka V. Rameshwara Rice Mills, Thirthahalli AIR 1987 SC 1359 wherein the Hon'ble Supreme Court has among other things observed that 'a right to adjudicate upon an issue relating to a breach to flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages is a subsidiary and consequential power and not the primary power. Even assuming that the terms of the relevant clause afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as the quantum of damages, the adjudication by the officer of State Govt. regarding the breach of the contract cannot be sustained under law because a party to the agreement cannot be an

arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract.'

39. Another the decision *India Thermal Power Limited V. State of M.P.* AIR 2000 Supreme Court 1005 is relied on by the learned counsel for the respondent/mill to the effect that 'merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If contract incorporates certain term and conditions in it which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties.'

40. He also relies on the decision *Dharappa V. Bijapur Coop. Milk Producers Societies Union Limited* (2007) 9 SCC 109 wherein the Hon'ble Supreme Court has held as follows:

"The question of repugnancy between a law made by a State Legislature with respect to one of the matters enumerated in the Concurrent List can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted."

41. However, where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void etc.'

42. The contention of the learned counsel for the respondent/mill submits that all the previous orders passed in the present case including the order dated 20.06.1996 passed in W.A.Nos.123 & 293 to 296 of 1996 etc. are all questions relating to violation of principles of natural justice, bias, lack of jurisdiction and validity of the terms and conditions which were left open and even the orders passed by the Authorities under the terms and conditions of electricity supply pertaining to the TNEB will come within the ambit of judicial review of this Court and the Board will be at liberty to take action against the respondent/mill only if the acquittal in the criminal case in C.C.No.143 of 2004 is converted into a sentence of conviction by any competent Court of law and that the decision in *Hyderabad Vanaspathi Limited V. A.P. State Electricity Board* (1998) 4 SCC 470 does not apply to the facts of the

present case since the terms and conditions of supply of electricity pertaining to the TNEB and those in Andhra Pradesh are not in pari materia and that the Andhra Pradesh Terms and Conditions of Electricity Supply refers to pilferage and malpractice, that are qualitatively distinct from theft but the terms and conditions of electricity supply of TNEB speak directly of theft and that in Andhra Pradesh a duty is cast under the Clause 39.9.2 on the enquiry officer to decide whether pilferage was pilferage was committed after due enquiry giving opportunity to the consumer, whereas there is no such requirement in Tamil Nadu and in Tamil Nadu as per clause 10 of the terms and conditions of supply of electricity the officers named are: (i) to inspect; (ii) to issue show cause notice; (iii) to make assessment; and (iv) to act as appellate authority and no one officer has been empowered to decide whether theft has been committed and that adjudicatory power has not been granted to any officer and once the criminal court has acquitted the accused the Board and its officers do not have power to assess any extra levy and that the power to assess does not include the power to adjudicate a disputed question and that accusation of theft cannot be assumed without a full-fledged trial.

Discussion and Decision:

43. In this connection, this Court aptly points out the decision in Emperor V. Gordhands Nathalal Patel and another in A.I.R. (30) 1943 Bombay 76 it is observed as follows:

"The expression "connects up" is not a term of art. It embraces the whole process of connecting the wires in the mandap erected by the consumer in his compound with other wires for the purpose of communicating with the works of the licensee.

The offence under S. 44 (b) consists in connecting up any works, e.g., supply lines, in the mandap with the metre in the house.

The expression "connects up" in S.44 (b) includes the householder who gives instructions to connect up, the contractor, if any, through whom those instructions are transmitted to the workman, and the workman who actually does the work. If the connection is made on the instructions of the owner of the house and the mandap he is guilty under S.14 (b)."

44. Further, the observation made in the decision in Maharashtra State Electricity Board V. Kalyan Borough Municipality in AIR 1968 SC 991 at page 992 wherein it is held that "Section 49 of the Electricity (Supply) Act, 1948 does not give an unguided and arbitrary power to the Board to fix tariff as it likes and there are sufficient restrictions and directions in the provision required to be complied by the Board in fixing uniform tariff or different tariff and the provision does not make any discrimination by treating the consumers supplied by the Board differently from consumers supplied by the licensees."

45. Moreover, in the decision in Mrs. Kamalammal and another V. Superintending Engineer, Vellore Electricity Distribution Circle and others AIR 2000 Madras 76, this Court has held that "in regard to theft of electricity by tampering of meter seals by a consumer running rice mill, wherein the recorded consumption has been found very much less for load connected and that the meter found meddled with for dishonest use of energy by replacement of original meter seals with bogus seals, the extra levy by Electricity Board is held to be valid and the pendency of criminal case could not be the ground for evading extra levy."

46. Continuing further, this Court pertinently points out the decision in K.L. Sharma V. State and Others in 1996 (3) Crimes 434 wherein it is inter alia observed that "abstraction, consumption or user of energy though might not be theft u/s. 378 of Indian Penal Code, yet it would be by virtue of section 39 of the Act, 1910 considered to be a theft."

47. This Court also quotes the decision in Tamil Nadu Electricity Board V. D.K. Kanniappa Mudaliar in 1985 Cri. L.J. 561 wherein this Court has held that "where the consumer had wilfully or fraudulently altered the index of the meter and tampered with the wiring for preventing it from duly registering the energy consumed he must be held to have committed the offence of theft of energy under S. 39 read with S. 44(c), Electricity Act. It could not be contended that in the absence of eye-witness for the commission of the offence the prosecution should fail."

48. Moreover, in the decision in Aditya Rotor Spin (P) Ltd., Kanpur and another V. U.P. State Electricity Board, Lucknow and another in AIR 1991 Allahabad 196 it is observed that "the principles of natural justice are not violated by disconnection of the electricity supply to a consumer without notice, if it is found that he was adopting any malpractice or was committing theft of energy. and regulation 22 which gives power to the Electricity Board, in such circumstances, to disconnect the supply without notice does not therefore violate the principles of natural justice."

49. In Mysore Minerals and Gas Company V. A.E.E.K.E. Board 1997 (3) Kant. L.J. at 525 it is inter alia observed that 'the bill gives a fair opportunity to consumer to demonstrate that the proposed back billing charges would be unwarranted, high or excessive. The said cause is more befitting to the requirements of the principles of natural justice.' In Rajasthan State Electricity Board V. Bajrang Lal Khetawat 1986 (2) W.L.N. 665 it is held that 'the State Act impose restrictions for controlling and interfering with the use of energy.' In Shamji Ramji Gohil V. Deputy Engineer (O & M) Gujarat Electricity Board and others AIR 2001 Gujarat at page 56 it is held that the question whether there is tampering with the meter is a question which has to be decided in proceedings before the committee after hearing the parties.' In a case involving allegation of improper use of energy it is the duty of the appellate authority to consider the objections filed by the consumer against back billing claim and to dispose of the same by passing an appropriate order as per decision in K. Raman Janey Alu V. A.E.E. Electrical 1999 (5) Kar. L.J. 40.

50.As per Section 21 of the Indian Electricity Act, 1910 the conditions of supply which an agreement between the licensee and consumer may contain and relate to a different range of subjects depending on the picture needs and requirements of the parties to the contract. Generally they cover such subjects like form of application for service; position of lines and meters, quotations for laying service lines and other works like wiring on the consumers premises and consumers duty to maintain it in good condition; and the procedure and manner of checking up meters are testing instalments on consumer premises and provisions regarding the licensee from liability in case of loss accruing to the consumer from failure or interpretation of power supply; access to consumers premises subject to Rule 137; the method of charging for the energy, always subject to the provisions of Sections 21, 23 and sixth schedule to the 1948 Act; payment of bills and consequences of default; notice before disconnection etc.

51.It is pertinent to apt that there is no compulsion for licensee to adopt model conditions for supply of electrical energy (Annexure VI (2) Rule 27) as per decision AIR 1968 Gujarat at page 179. In the decision S.Manickam V. Dhanakoti and others 1983 Vol XXVII (Criminal) at page 315 this Court has inter alia observed that 'in the instant case, there is absolutely no doubt that the officials of the Anti-Power Theft Squad and the local Officials of the Electricity Board have detected removal of seals, tampering of meter and theft of energy through other devices. The actual extraction of electricity by artificial means has been proved and that here is a case where the first respondent is the owner of the meter connection and the second respondent is running some business therein. It is futile to expect direct evidence as to whether the first respondent or the second respondent has tampered with the meter. This is a matter exclusively within the knowledge of the accused persons. When once the prosecution discharge the initial onus of proof, it is for the accused to show that the tampering or the abstraction of electricity was done without their knowledge."

52.In M/s.Haryana Ice Factory V. Municipal Corporation of Delhi and another AIR 1986 Delhi 78 it is held as follows:

"The conditions of supply framed by reason of the statutory power conferred under S.21(2) of the Act, have the force of law by reason of its sustenance from the statute. They are not in the nature of administrative instructions in respect of working the relations between the licensee and its consumers. The conditions of supply are ancillary and subserve the purpose of regulating the relations with persons who are or intend to become consumers. A licensee is entitled to impose any reasonable conditions which would enable him to recover or secure the energy charges consumed. The licensee is entitled to manage its commercial activities in such a way that it does not incur any loss or enter into unnecessary litigation with the consumers for recovery of energy charge when it is permissible

to secure the payments. It would be a prudent commercial condition of supply. Also, by virtue of R.27 of the Electricity Rules (1956), the rule-making authority itself contemplated that one of the conditions of supply permissible under S.21(2) is a condition relating to the security.

(Paras 10,11)

Thus, where by an amendment to the clause in the agreement about conditions of supply, it was provided that the consumers on demand shall from time to time replenish security deposit in case the amount already deposited falls short of the energy charges equal to consumption of three months in case of monthly billing and four months in case of bimonthly billing, the amendment was held, not inconsistent with the Act or the Rules. Cl.VI of the Schedule to the Act does not stand in the way of the licensee in this case in making the impugned demands from the consumers. (paras 15, 16)."

53. In C.E.S.E. Ltd., V. Karan Kafe 2001 Cal. W.N. 396 (Cal) it is held that 'the supplier of power can without reference to the consumer disconnect supply and call upon the consumer to make payment by way of compensation for theft of power. However, such a position will operate only on prima facie proof of fraud and pilfering.'

54. In Saila Bala Ray V. Darjeeling Municipality AIR 1936 Calcutta at page 265 it is observed that 'Clause © subsection (3) of Section 23 of Indian Electricity Act, 1910 does not authorise a licensee to levy minimum charges without any agreement with the consumer. Clause 11A of the Schedule only empowers or authorises the licensee to levy the minimum charges, but that power can only be exercised by licensee through a contract entered into with an intending consumer and not otherwise.'

55. It is not out of place to point out that the word "abstraction" should be construed liberally and in the context of Section 39. It means taking on appropriation. Energy may be dishonestly abstracted by artificial means or unauthorised decrees for example, energy before it passes through a consumer's meter, may be abstracted from the main of the licensee by an unauthorised wire connecting the main with a private terminal, the connecting wire in the artificial means for abstraction as per decision in State of Gujarat V. Bhenji Ranchodji Patala Thakor 1999 (2) Guj. L.R. at page 1767. Loosening the stead of the meter installed for the purpose of recording the consumption of energy and allowing accumulation of dust on meter disc, constitutes artificial means of dishonest abstraction of energy by impeding free movement of meter disc. Presumption of guilt can be drawn from existence of such means as per decision in State of Bihar V. C.P.Sharma 1963 (2) CrL.L.J. 579 (Pat). Moreover, insertion of a small pin through a hole in the meter board stopping the rotation of meter disc is dishonest abstraction of electricity as per decision in State of M.P. V. Deep Chand 1982

56.It is relevant to state that to facilitate proof of theft Section 39 of the Indian Electricity Act, 1910 provides that the existence of artificial means for such abstraction is prima facie evidence of such dishonest abstraction as per decision State of Gujarat V. Benji Ranchodji Patala Thakor 1999 (2) Guj. L.R. 1767. For the purpose of Section 44 of the Indian Electricity Act, the existence of the artificial means gives raise to presumption that the meter was prevented from duly registering, but this presumption cannot be imported into Section 39. To make it an artificial means, the tampering must in fact go further and the meter must be converted into an instrument for recording less than the units actually passing through.

57.As per Section 79 of the Electricity Supply Act, 1948, the Electricity Board is empowered to make regulations for its internal administration the clauses (a) to (k) in regard to the administration of the funds and other property of the Board, and the maintenance of its accounts and any other matter arising out of Board's functions under this Act for which it is necessary or expedient to make regulations do not constitute an exhaustive list and the Board is free to make regulations in regard to any matter of internal administration. The Board has been given the autonomy subject to the directions on question of policy which the State Government may issue under Section 78 A Regulations in the nature of subordinate legislations cannot confer authority on the Board to interfere with the contractual rights and obligations unless specified power to make such regulations is vested in the Board by some other provision in the constitute, expressly or by necessary implication.

58.As far as the present case is concerned, the show cause notice dated 17.05.1995 issued by the Executive Engineer/O & M Town, Salem-9 addressed to the respondent/ mill refers to theft of energy in the service connection has been reported by means of inspection on 11.05.1995 at 4.00 hours, which has been inspected by the Assistant Executive Engineer/O & M/Gugai/Salem along with Anti-Power Theft Squad and Meter Rely Test Branch and that a show cause has been issued requiring the respondent/mill as to why extra levy should not be imposed in accordance with the terms and conditions of electricity supply, within seven days from the date of communication etc. To this, the respondent/mill by its reply dated 21.05.1995 has inter alia stated that the show cause notice does not specify the name and designation of the officer who has made a report and further that it does not specify the manner in which the alleged theft of energy has been effected and to their knowledge there has been no theft of energy in their service and as per clause 10 of the Contract the power of the TNEB to levy additional charges on the consumer will arise only if the consumer is found indulging in theft of malpractice in respect of use of electrical energy and Section 39 and 44 of the Indian Electricity Board provide for adequate remedies to the Board in the case of any theft of energy and under Section 48 it is open to the Board to claim compensation from the consumer in addition to the penalties contemplated under the Act in the event of consumer being found to have indulged in theft of energy and such compensation can be claimed only by filing a civil suit under the Law of Tort and

Contracts and Section 73 and 74 of the Indian Contract Act prohibit the claim of any compensation without proof of breach the extent of damages/loss and since the report mentioned in the notice has not been forwarded and that their meter connection has been regularly and periodically inspected by the officers of the Electricity Board and not even during the inspection made on 27.04.1995 and on 09.05.1995 anything has been noticed or reported by the officers suggesting any theft of energy or malpractice in connection with the use of energy and therefore, the proposed action of the Board is motivated, vindictive and malafide.

59. In the assessment order dated 26.05.1995 issued by the Superintending Engineer/Salem Electricity Distribution Circle/Salem addressed to the respondent/mill, it is inter alia stated that 'on examination of your representation with reference to the information available, it is found that the following has been committed in your service connection 'Theft of Energy' and the extra levy payable by the mill for the energy stolen is worked out as Rs.9,43,87,324/- for which the working sheet is enclosed and that the respondent/mill has been directed to pay the extra levy on or before 09.06.1995, failing which the service connection will be disconnected and if the mill choose to prefer an appeal against the order, it may do so before the Appellate Authority viz., Chief Engineer/ Distribution/Salem Region at Erode within 60 days from the date of receipt of the notice after paying the extra levy.' Thereafter, the respondent/mill has filed several writ petitions and in the Writ Appeal Nos.123 and 293 to 296 of 1996 orders dated 20.06.1996 the respondent/mill has been directed to urge all the contentions before the appellate authority, including the one that some of the terms and conditions of supply are not valid and that the writ petitioner has already willingly availed of the remedy of appeal before the appellate authority and leave open all the questions raised by it so that they can be decided in the said appeal etc. and the appellate authority/second appellant viz., Chief Engineer/Distribution/Salem Region at Erode has passed the final order on 11.06.1997 dismissing the appeal and confirmed the order of assessment dated 26.05.1995 of the Superintending Engineer/Salem Electricity Distribution Circle, Salem and since the respondent/mill has paid a sum of Rs.2 crores as against the assessment amount of Rs.9,43,87,324/-, the respondent/mill has been directed to pay the balance amount of Rs.7,43,87,324/- to the Superintending Engineer, Salem Electricity Distribution Circle, Tamil Nadu Electricity Board, Salem in one lumpsum within 15 days from the date of receipt of the order failing which the supply to HTSC 30 TF. I. shall be liable for disconnection.

60. A perusal of the appellate order dated 11.06.1997 passed by the second appellant/Chief Engineer/Distribution/ Salem Region/Erode refers to the order passed by this Court in W.P.Nos.11039, 11040 and 11042 of 1995 dated 28.08.1995 wherein the respondent/mill has been directed to file an appeal against the impugned order before the appellate authority within two weeks from today and all the contentions sought to be urged in the writ petitions are left open to the urged before the appellate authority and the appeal so filed shall be retained on the file of the appellate authority till such time the sum of Rs.2 crores as directed above is deposited by the petitioner and after the deposit is made, the respondent Board shall

consider the appeal on merits and shall dispose of the same by a reasoned order, as expeditiously as possible and the appellate authority shall afford personal hearing to the petitioner etc.

61. Admittedly the respondent/mill has filed the appeal in time and the last instalment of the sum of Rs.2 crores has been paid on 19.04.1997 even in W.A.No.123 of 1996 orders dated 20.06.1996 it has been ordered by the appeal filed by the writ petitioner/mill shall be taken up on hearing by the appellate authority, concluded and orders passed etc. In fact, in W.P.Nos.11039, 11040 and 11042 of 1995 order dated 28.08.1995, this Court has directed that the mill be afforded the personal hearing in the appeal. Therefore, it is quite evident that the respondent/mill has been given the opportunity of personal hearing adequately and resultantly, it cannot be said that there has been denial of the principles of natural justice by the appellant Board, in our considered opinion. Moreover, the appellants/Board have made the assessment as per the provisions of clause 8.03 of the Terms and Conditions and extra levy has been worked out for 81.73.700 units and 17 50 KVa towards energy and demand charges respectively according to the appellants. At this juncture, the clause 8.03 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity refers to the manner of extra levy of assessment in regard to the low tension service connections, high tension service connections and in regard to the high tension service connections, the demand charges for the purpose of assessment of maximum demand for the month, the sanctioned demand of the consumer will be taken as the maximum demand and the quantity of electricity consumed will be worked out in respect of industrial and non-industrial category towards energy charges and for one shift in regard to industrial, the maximum demand in K.W. X 8 hours x duration in days as per clause 8.02 and for 2 shifts maximum demand in K.W. X 16 hours x duration in days as per clause 8.02 and for 3 shifts the maximum demand in K.W. X 24 hours x duration in days as per clause 8.02. In fact, clause 8.02 refers to extra levy for theft of energy will be made for a period of 12 months or from the date of service connection to the date of detection, whichever period is less and in respect of high tension service connections highest high tension tariff rate x 4 and the charges arrived at will be rounded off to the next higher rupee and for the maximum demand in high tension service connection, the highest high tension tariff rate for maximum demand x 2 etc.

62. In regard to the contention of the respondent/mill that the defect of violation of principles of natural justice in the trial stage cannot be cured even by granting a de novo enquiry at the appellate stage, this Court is of the considered view that the same cannot be countenanced in the eye of law because of the fact that the respondent/mill has been directed to be given the opportunity of personal hearing in the appeal as per order dated 28.08.1995 in W.P.Nos.11039, 11040 and 11042 of 1995 and even in the order dated 20.06.1996 in W.A.Nos.123 and 293 to 296 of 1996, the Division Bench of this Court has inter alia directed taking up of the appeal filed by the respondent/ mill by the appellate authority ... concluded and orders passed and in pursuance of the said orders passed in fact the respondent/mill has appeared before the appellate authority and therefore, it is not open to the respondent/ mill to raise that plea of defect in the violation of principles of natural justice and in

fact, the respondent/ mill is estopped from raising such a plea, in our considered opinion. Before the Appellate Authority, the respondent/mill has been given the due opportunity to put forth their case and in fact, a detailed order dated 11.06.1997 has been passed by the appellate authority in appeal against the assessment order in Lr.No.SEDC/SLM/AEE-GL/AE1/FTTA(1)/95-96/PR.240/95 dated 26.05.1995.

63.Coming to the next contention of the respondent/ mill that the mill has been acquitted in criminal cases viz., C.C.No.143/2004 and C.C.No.142/2004 in respect of the first theft detected on 11.05.1995 and the second theft detected on 19.09.1999 against which Criminal Revision Nos.1678/2007 and 1677/2007 have been filed by the appellants Board and since the same have been admitted by this Court on 13.11.2007, the criminal case proceedings have not reached finality and they are pending adjudication by this Court. Moreover, the dishonest abstraction of electricity described in Section 39 of the Indian Electricity Act, 1910 cannot be an offence under the Indian Penal Code for under it alone it is not an offence, the dishonest abstraction is by Section 39 made a theft within the meaning of the Code that is, an offence, of the variety described in the code as theft. As the offence is created by raising a fiction, the Section 39 of the Act which raises the fiction, must be said to create the offence in as much as the abstraction is by Section 39 deemed to be an offence under the Code, the fiction must be followed to the end etc. The dishonest abstraction of electricity is deemed to be theft under the code and it must be deemed for all purposes a theft in fact the Court must read Section along with provisions of IPC dealing with theft. As a matter of fact, though dishonest abstraction of electricity cannot be an offence under Section 379 IPC, but due to legal fiction created by Hon'ble Supreme Court, it shall be by virtue of this Section considered to be a theft and presumption can be drawn that it was done dishonestly and unauthorisedly by the consumer as per decision in K.L.Sharma V. State 1996(3) Crimes page 434.

64.Really speaking, Section 39 of the Indian Electricity Act does not say that dishonest abstraction or consumption or use of energy is theft. However, Section 39 means no more than the offender is to be tried in the same way as if he has committed the offence of theft. Furthermore, Sections 39 and 44 of the Indian Electricity Act are to be considered separately for the purpose of Section 26 of the General Clauses Act as per Privy Council Judgment in Babulal Choukhani V. King Emperor AIR 1938 PC 130.

65.It is pertinent to point out that in the decision in Vishwanath V. Emperor AIR 1936 All. at page 742 it is held that 'an offence for theft of electricity is an offence under Section 379 of the Indian Penal Code because Section 39 of the Electricity Act and Section 50 applies to such an offence and there can be no prosecution except at the instance of person aggrieved viz., the Electricity Company. Added further, this Court points out that in a case there was an allegation of theft of/or unauthorised enhancement of sanctioned load against the company running induction furnace and there was no direct conclusive evidence of theft of electricity and the inference was found out on circumstantial evidence and it was held that in the facts and circumstances of the case, the Board was

obliged to observe the principles of natural justice and the consumer was entitled to opportunity to put forth his case before the disconnection of its line and the demand made under Penal provisions of clause 10.9 of the tariff as per decision in M/s.Kamber Concast Ltd. V. Bihar State Electricity Board AIR 2000 Patna 183. It cannot be gainsaid that an authority making an assessment of dishonest abstraction of electricity has to follow the formula enumerated under the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity.

66.It is an axiomatic fact that the punishment imposed under Section 39 of the Indian Electricity Act, 1910 is in addition to any civil liability which an accused may incur by reason of his wrongful or criminal act and further that Section 48 of the Act clearly specifies that penalties imposed shall be in addition to and not to derogation of any liability in respect of payment of compensation. As a matter of fact, the issue of theft is a pure question of fact and a writ Court cannot record any finding thereon and where the inspection team found cable to have been connected from 11 KVa line to transformer of flour mill by passing meter, it was held that it was not possible for the writ court to record finding in favour of petitioner on the basis of sealing report of Superintending Engineer and Police report of 'no theft' as per decision in Bareilly Flour Mill (P) Ltd. V. Uttar Pradesh State Electricity Board, Lucknow 2000 (2) All WC 913.

67.The technical rules applicable to prove the theft of a chattle do not apply to proof of this special offence. In fact, Section 39 of the Indian Electricity Act is a major offence and all that is required is that the section which creates a statutory theft sufficiently established against whosoever dishonestly abstracts, uses or consumes energy. In the decision in Phalkan Singh V. State of M.P. 1981 CrL. L.J. at page 57 it is held that Section 39 of the Indian Electricity Act makes dishonest, abstraction and energy of theft offence punishable under Section 379 IPC.

68.Inasmuch as the Hon'ble Supreme Court has observed in the decision in Hyderabad Vanaspathi Limited V. A.P. State Electricity Board and others (1998) 4 SCC 470 to the effect that the terms and conditions of business framed by statutory body under statutory power are not purely contractual but are statutory in character and that the Board has power to define malpractice and to prescribe an adjudicatory measure for assessing and levying penal damages and as a matter of fact, in exercise of powers under Section 49 of the Electricity (Supply) Act, 1948, the terms and conditions of supply of electricity to consumers clause 39 provides safeguards against pilferage of energy and malpractices by consumers and prescribing machinery for assessing and levying penal charges it is held that the power is empowered to frame terms and conditions of supply which is not violative of any provision of the Act, this Court is of the view that the principles laid down by the Hon'ble Supreme Court as referred to in the decision cited supra, will squarely apply to the present case on hand and because of the fact that clause 8.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity, August 1995 speaks of any consumer who dishonestly

abstracts or uses energy shall be deemed to have committed theft within the meaning of the Indian Electricity Act, 1910 and in lieu of the fact that clause 10.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity refers to the category of authorised officers to inspect the service connection to issue show cause notice, make assessment and function as appellate authority in case of violation or theft of energy, the same cannot be construed to be violative of Article 14 or Article 20 of the Constitution of India and therefore, the plea of the respondent/mill that the adjudicatory power has not been granted to any officer under the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity fails and the same is rejected by this Court. Further, since the Clause 8.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity speaks of dishonest abstraction or use of energy as deemed to have committed theft, it cannot be said by any stretch of imagination that the Andhra Pradesh Terms and Conditions of Electricity Supply speak of pilferage and malpractice, which are qualitatively distinct from theft and therefore, the decision of the Hon'ble Supreme Court in Hyderabad Vanaspathi Limited V. A.P. State Electricity Board and others (1998) 4 SCC 470 will not apply to the facts of our present case, is not accepted by this Court.

69. Be that as it may, this Court opines that it cannot be said that the process of assessing and levying penal damages is a case of delegation of legislative function and further that the principle "nemo judex in causa sua" will not apply to the present case since the officers have no personal lis with the consumers and since there is nothing wrong in their adjudicating the matter especially when the consumers may be represented through Advocates and the formula for making provisional assessment is fixed in the clause itself, the contention that board officials have no right to assess or levy, penalty etc. cannot be countenanced and therefore, one cannot find fault with the Clause 8.00, 8.03, Clause 10.00 of the Terms and Conditions of Supply of Electricity in Chapter 37 captioned Schedule Part I and Appendix VI and VII contained in Chapter 38 captioned Schedule part II in respect of Tamil Nadu Electricity Board and the same are statutory in character and are legally valid in the eye of law.

70. In the up-short of detailed discussions mentioned supra and on an overall assessment of facts and attendant circumstances of the present case, we are of the considered view that the reasoning of the learned single Judge in allowing the Writ Petition Nos.9027 and 9028 of 1997 are not correct and the order passed by the learned single Judge in W.P.Nos.9027 and 9028 of 1997 are set aside to prevent aberration of justice and resultantly, we allow the Writ Appeal Nos.343 and 344 of 1998 filed by the appellants /Board, leaving the parties to bear their own costs throughout.

W.P.No.7417 and 7418 of 2000:

Discussion and Decision:

71. The case of the petitioner/mill is that the enquiry officer viz., the second respondent is biased and that he has refused to give opportunity to the petitioner/mill to cross examine the witnesses and

that no liability can be imposed on the consumer unless he is guilty of theft of malpractice and on 17.02.2000 the petitioner/mill's counsel has not been permitted to effectively cross examine the witnesses etc. and on 08.03.2000 an order of assessment dated 06.03.2000 passed by the second respondent imposing an extra levy of Rs.11,80,68,521/- on the petitioner has been received and the second respondent in the course of his order dated 06.03.2000 has inter alia stated that due opportunity was given to the petitioner/mill etc. and that neither the petitioner nor their counsel had rebutted the statements of the Board's witnesses and that no material evidence has been produced by the petitioner to disprove the allegation of dishonest abstraction and consumption of energy and has held that theft of energy by the mill has been confirmed and after passing such an order, the second respondent cancelled that order by his order dated 20.03.2000, revising the levy as Rs.13,11,58,521/-.

72.Though the petitioner/mill has taken the pleas that any enquiry by biased officers will be in violation of natural justice and an infraction of Article 14 of the Constitution and further that clauses in the terms and conditions of supply empowering the officers of the Board to deal with theft cases are ultra vires the powers of the Electricity Board, since no power to deal with theft cases has been conferred on the Board and that no one shall be a judge in one's own cause and moreover, an officer empowered to assess extra levy cannot assume such power and in fact, the power to assess does not ipso facto include the power to adjudicate disputed questions of violation and the quantum of levy is excessive, penal and arbitrary and that the Electricity Board cannot assume jurisdiction to interfere with the consumption of the consumer except to the extent specified in Section 21(1) of the 1910 Act and further that since the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity have not been incorporated in the agreement, nor published in the Gazette until 1996 and never made available to or brought to the notice of the petitioner, such terms being opposed to public policy and violative of Article 14 of the Constitution and that the disconnection effected is unauthorised, vitiated by total lack of jurisdiction. सत्यमेव जयते

73.This Court pertinently points out that the Hon'ble Supreme Court in Hyderabad Vanaspathi Limited V. A.P. State Electricity Board and others (1998) 4 SCC 470 has clearly held that the terms and conditions for supply of electricity to consumers as notified by the Electricity Board in exercise of power under Electricity (Supply) Act, 1948, which has been made applicable to all consumer availing supply of electricity or statutory in character and they are not purely contractual and that the Board has been empowered to frame terms and conditions of supply which are not violative of any provision of the Act and the clause 39 of the Terms and Conditions of Electricity Supply to consumers as notified by the Andhra Pradesh State Electricity Board in regard to malpractices and pilferage of energy and fraud played by consumers are held to be not in conflict with relevant provisions of Electricity Act and the adjudication by the officers of the Board itself will not cover the principle of nemo judex in causa sua inasmuch as the officers of the Board have no personal lis with the consumers, this Court is of the considered view that contentions put forward by the petitioner/mill in this regard

fail, in the considered opinion of this Court.

74.It is not out of place to point out that the Executive Engineer/Operation and Maintenance/Town/Salem-1 of the Electricity Board in the show cause notice dated 30.09.1999 addressed to the petitioner/mill has inter alia stated that on 19.09.1999 at about 3 hours, the HT.SC. at SF.No.17/2, 17/3, 17/4, 17/5 and 17/6 Trichy Main Road, Gajalnaickenpatty, Salem - 636 201, sanctioned in favour of the Mill has been inspected by the Assistant Executive Engineer/Operation and Maintenance/Gugai/Salem along with the Anti Power Theft Squad/Salem, Executive Engineer/ Operation and Maintenance/Town/Salem-1, Executive Engineer/ Meter and Relay test/Salem and staff after issuing the intimation of inspection notice to your representative S.Srinivasan, Spinning Master of the mill, who was present has refused to refuse the notice and during the entire inspection, Srinivasan (Spinning Master) and A.Basvalingam (Fitter) were present and it was found that there was theft of energy committed by the mill by using foreign materials and artificial means, to meddle the metering set arrangement and to prevent the actual recording of electrical consumption by the EB meter and two sets of foreign materials consisting of 2 pairs of long wooden reapers, copper hook wire and insulated cable were found used at 'R' phase and 'B' phase incoming and outgoing sides of the metering set, to artificially by pass the metering arrangements and each set of the aforesaid foreign materials consists of two pairs of wooden reapers fitted with copper hooks at the top of each and these copper hooks of the two reapers were found inter connected with a cable wire etc. and thereby the mill has dishonestly abstracted, consumed, used energy which is an offence punishable under Section 39(1) and 44(1) (c) of the Indian Electricity Act and further that a police complaint has been lodged by P.Chokkalingam, Assistant Executive Engineer/O&M/Gugai/ Salem, registered in Crime No.905/99 at Mallur Police Station and that a mahazar has been recorded in the presence of the Mill's representatives S.Srinivasan and A.Basvalingam and they refused to sign in the magazar and approximate loss caused by the mill due to dishonest abstraction of energy is estimated at Rs.13,11,58,521/- as per the Board's Terms and Conditions of Supply of Electricity etc. and this is the second time theft has been committed within 5 years and that the H.T. Service HT.SC.No.30/Tariff-I of the company was disconnected on 19.09.1999 for three months as per the Terms and Conditions of Supply of Electricity of TNEB vide BP.61 dated 24.12.1988 and amended on 31.8.1995, Clause 9.01 and 37 of the schedule Part-I etc.

75.Added further, in the said notice the mill has been asked to appear in person or through representative with relevant documents for an enquiry before the Assessment Officer, the Superintending Engineer/Salem Electricity Distribution Circle/Salem-14 on 15.10.1999 etc. To the said show cause notice issued by the third respondent, the petitioner/mill in its reply dated 06.10.1999 has stated among other things that the allegation as a case of second theft etc. are based entirely on presumptions and that the act of disconnection of supply is in violation of the order passed by the Division Bench of the High Court Madras on 11.03.1998 in C.M.P.No.3479 of 1998 in W.A.No.344 of 1998 and subsequently made absolute on 24.3.1998 and therefore, the bias and malafide are writ large on the show cause

notice itself etc. The Superintending Engineer, Chennai Electricity Distribution Circle, Chennai - 40 has addressed a letter dated 20.03.2000 to the mill stating that the assessment order dated 06.03.2000 already is hereby cancelled, as the demand charges computed was found to be incorrect arithmetically as per Terms and Conditions of Supply of Electricity and a fresh revised assessment order follows. On 20.03.2000 the second respondent Electricity Board has issued a fresh assessment order cancelling the earlier assessment order dated 06.03.2000 inter alia stating that 'as no material evidence was produced by the mill to disprove the dishonest abstraction and consumption of energy, based on the enquiry on 05.01.2000 and on 17.02.2000 has confirmed that theft of energy has been detected on 19.09.1999 by the officers of the Board in HT SC.No.30, M/s.Annamalai Cotton Mills(P) Ltd., Salem has been proved beyond doubt and therefore, has concluded that the mill is liable to pay the extra levy for the energy stolen worked out under Clause 8.02 of the clause 37 of the Schedule Part I of the Terms and Conditions of Supply of Electricity issued in B.P.Ms (FB) No.61 (Adm.Branch) dated 24.12.1988 and as amended from time to time as Rs.13,11,58,521/- and the mill has been directed to pay the aforesaid sum in 15 instalments as mentioned in detail in the order and the failure to pay the first instalment or any of the instalments on or before the specified date shall entail disconnection of electricity supply and if the mill choose to prefer an appeal against the order, they may prefer an appeal to the Appellate Authority viz., Chief Engineer/Distribution/Erode Region within 60 days from the date of receipt of this order without prejudice to any of the action that may be taken by the TNEB including disconnection of service.

76.As a matter of fact, the order of the second respondent specifies that an appeal can be preferred before the Appellate Authority viz., Chief Engineer/Distribution/ Erode Region within 60 days from the date of receipt of the second respondent's order. When the writ petitioner/mill has a remedy to prefer appeal as per clause 11.01 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity and when clause 12.00 speaks of the disposal of an appeal by the Appellate Authority, then without exhausting such remedy, this Court opines that the petitioner/mill cannot approach this Court by way of writ jurisdiction and in this view of the matter, this Court holds that W.P.Nos.7417 and 7418 of 2000 filed by the petitioner/mill are not maintainable and the same are hereby dismissed, leaving the parties to bear their own costs. It is open to the petitioner/mill to prefer an appeal before the Appellate Authority as against the order dated 20.03.2000 passed by the second respondent viz., Superintending Engineer/Chennai Electricity Distribution Circle/Chennai, raising all factual/legal contentions and to seek appropriate remedy in the manner known to law, if so advised.

W.P.No.6106 of 2000:-

Discussion and Decision:

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77.The case of the petitioner is that on 25.01.1996 no responsible staff member working in the petitioner's factory was present except one Amaldoss an Electrical Foreman, who was brought

from his residence by the Officials of the Electricity Department and later Ravikumar, Director was also summoned and the petitioner received a show cause notice dated 31.1.1996 informing that there was theft of electrical in the service connection which has been reported and that the petitioner was called upon to reply the same and the petitioner caused a reply on 05.02.1996 to the show cause notice highlighting all the relevant facts and denying the fact of any tempering of seals or indulging in any act of theft of electrical energy and at that time the petitioner filed W.P.No.1657 of 1996 challenging the show cause notice and the action taken against the petitioner for theft of electrical energy and in W.M.P.No.2542 of 1996 by an order dated 13.02.1996 a stay of the operation of all further proceedings pursuant to the notice dated 31.1.1996 of the third respondent including disconnection of electricity service connection has been ordered and this Court on 24.11.1997 allowed the writ petition and quashed the notice dated 31.1.1996 and has not given further liberty to the respondents to take any fresh action and further that the petitioner filed W.P.No.4445 of 1996 in regard to the connection of additional load an extent of 150 KVA wherein the petitioner has been directed to deposit Rs.9 lakhs in 15 equal monthly instalments and the Electricity Board filed W.A.No.321 of 1997 as against the orders passed in W.M.P.No.7145 of 1996 in W.P.No.4445 of 1996 directing supply of additional load of 150 KVA on payment of Rs.9 lakhs etc. and in the said writ appeal, the said order was also confirmed by the Division Bench and W.P.No.4445 of 1996 was also dismissed in view of the fact that the petitioner has complied with the interim orders etc. Further, for the very same subject matter of alleged theft reported on 25.01.1996 a fresh show cause notice was issued by the third respondent on 06.08.1998 alleging theft of electrical energy and tampering of seals in the doors of the Meter Box and along with it certain enclosures were also made. The petitioner was also sent a detailed reply to the show cause notice by letter dated 11.8.1998 and subsequent to the reply sent by the petitioner on 11.08.1998 the petitioner received a letter from the second respondent requesting the petitioner to appear for an oral enquiry on 28.11.1998 and that an enquiry was held on 03.12.1998 and that the petitioner by way of his detailed representation dated 08.12.1998 clarified all the aspects and also questioned the conduct of Amaldoss and further relied on the orders passed in W.A.No.321 of 1997 to show that no liberty has been given by this Court to proceed afresh against the petitioner by issuing any fresh cause notice and the said order operates as res judicata etc. and without considering any of the objections raised by the petitioner on merits, reiterating what was mentioned in the show cause notice and referring to one of the explanations sent by the petitioner to the show cause notice dated 11.08.1998 and without referring to a detailed reply dated 08.12.1998, the order dated 05.01.1999 has been passed casually and that the said order is not only illegal but also contrary to the terms and conditions of supply of electricity as framed by the first respondent particularly paragraph 8 and 10 contained in Chapter 37 titled Schedule Part I and Appendix VI and VII contained in Chapter 38 titled Schedule Part II and as such liable to be declared as ultra vires of the powers of the first respondent as unconstitutional, void and violative of Article 14 of the Constitution.

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78.The legal contention of the petitioner is that the first

respondent is not empowered to pass the impugned order under any provisions of law or any statutory rule or regulations during the relevant point of time when the action was initiated against the petitioner and neither the Indian Electricity Act, 1910 nor the Electricity (Supply) Act, 1948 empowers any such power to the first respondent and Section 79 (1) of the 1948 Act empowers the respondents to make regulations to set out the principles governed the supply of electricity to non-licensee under Section 49 and the same is a mere contractual stipulation which is contained in para 10 of the terms and conditions and the second respondent, who is named as authority to make an assessment for the violation of the conditions or theft of energy empowered to make such assessment does not imply or include an authority to adjudicate upon a disputed issue whether in fact theft was a violation and that the second respondent has no legal authority to hold that the petitioner had committed theft of energy and further that an officer of the Electricity Board making an adjudication and assessment will be an unilateral stipulation prescribed in the printed form under the Terms and Conditions of Electricity Supply and that the said stipulation is opposed to public policy and unconstitutional and the question of assessment of extra levy for theft of energy will arise only if the consumer is found to be guilty of such theft within the meaning of Indian Electricity Act.

79. It is to be noted that this Court has dismissed the writ appeal in W.A.No.135 of 1999 filed by the petitioner herein on 13.03.2000 leaving it open to the appellant/ company to pursue the statutory appeal etc. and in fact, has given the liberty to the petitioner/appellant company to represent the appeal within 15 days and on such representation, the Appellate Authority has been directed to consider the appeal. At this juncture, it is pertinent to point out that the second respondent/Superintending Engineer/Kancheepuram Electricity Distribution Circle/ Kancheepuram in his letter dated 05.01.1999 addressed to the petitioner/company while issuing extra levy assessment notice in regard to the theft of energy has inter alia observed that in the statement S.Amaldoss, Electrical Foreman of the factory has admitted to have removed the seal in the meter and prevented the functioning of the meter and the consequent recording of the meter and there is no correlation between energy consumption and goods output as per the records produced by the company and that the extra levy payable by the company for the energy stolen is worked out under Clause 8.02 of the Schedule as Rs.1,13,92,283/- in which a sum of Rs.9,00,000/- has been paid already by the petitioner/company and therefore, the balance amount required to be paid by the company is Rs.1,04,92,283/- which has to be paid in 15 instalments, on the dates specified therein and the petitioner/company has been informed if it chooses to prefer an appeal against the said order may prefer an appeal to the appellate authority viz., Chief Engineer/Distribution/Vellore Region within 60 days from the date of receipt of the order without prejudice to any other action that may be taken by TNEB including disconnection of service as stated above etc. The Appellate Authority viz., Chief Engineer/Distribution/Vellore Region/Vellore in his proceedings No.3629/207/CEV/SRI/P.Appel No.5/2002-03 (Pacific)/2004 dated 31.05.2004 while dealing with the appeal filed by the petitioner/ company has directed the petitioner/company to pay a sum of Rs.1.04,92,283/- as claimed in

the notice as per the conditions stipulated in the notice and further observed that the other terms and conditions of the said notice will also remain unaltered and disposed of the appeal. In fact, in the show cause notice dated 05.01.1999 a calculation has been given as to how the second respondent has arrived at a figure of loss of revenue due to energy theft to the Board + the loss of revenue due to MD which has been mentioned at Rs.11,42,100/- and the total has been arrived at a figure of Rs.1,13,92,283/-. The order of the Appellate Authority of TNEB viz., Chief Engineer/Distribution/Vellore Region/Vellore-6 dated 31.05.2004 has become final.

80.It is the case of the respondents/Electricity Board that when the inspection was made in regard to the petitioner's mill throughout inspection S.Ravi, Technical Director of the Company and S.Amaldoss, Electrical Foremen of the company were present etc. In this Connection, it is pertinent to point out in C.E.S.E. Ltd., V. Karan Kafe 2001 Cal. W.N. 396 (Cal) it is held that 'the supplier of power can without reference to the consumer disconnect supply and call upon the consumer to make payment by way of compensation for theft of power. However, such a position will operate only on prima facie proof of fraud and pilfering.' The word 'abstraction' ought to be construed liberally and in the context of Section 39 of the Indian Electricity Act, 1910, it means taking on appropriation. Energy may be dishonestly abstracted by artificial means or unauthorised decrees for example, energy before it passes through a consumer's meter, may be abstracted from the main of the licensee by an unauthorised wire connecting the main with a private terminal, the connecting wire in the artificial means for abstraction as per decision in State of Gujarat V. Bhenji Ranchodji Patala Thakor 1999 (2) Guj. L.R. at page 1767. Loosening the stead of the meter installed for the purpose of recording the consumption of energy and allowing accumulation of dust on meter disc, constitutes artificial means of dishonest abstraction of energy by impeding free movement of meter disc. Presumption of guilt can be drawn from existence of such means as per decision in State of Bihar V. C.P.Sharma 1963 (2) Cr.L.J. 579 (Pat). Moreover, insertion of a small pin through a hole in the meter board stopping the rotation of meter disc is dishonest abstraction of electricity as per decision in State of M.P. V. Deep Chand 1982 Cr.L.R. (M.P.) 388.

81.The learned counsel for the petitioner/mill cites the decision in Transmission Corporation of A.P. Ltd., and others V. M/s.Sri Rama Krishna Rice Mill AIR 2006 Supreme Court 1445 in regard to the provisional and final assessment under Section 49, 51 of Electricity (Supply) Act, 1948 relating to pilferage of energy alleged against consumer on the basis of report of some official the Hon'ble Supreme Court has observed that 'the consumer be given opportunity to cross-examine said official.' He also relies on the decision in Dakshin Haryana Bijliritrans Nigam Ltd. V. M/s.Paramount Polymers Pvt. Ltd. JT 2006 (9) SC 349 at page 350 wherein the Hon'ble Supreme Court 'has allowed the appeal and remitted the writ for fresh consideration by the High Court and granting liberty to respondent to amend the writ petition including the prayers therein and held that the High Court are considered the validity of the clause inserted in 2001 in the Terms and Conditions of Supply of Electricity and since electricity supply had been given in terms of the order of the High Court, with a

view to avoid inconvenience, respondent has been directed to deposit an amount of Rs.25 lakhs for the continued supply of electricity till the disposal of the writ.'

82.It is not out of place to point out that to facilitate proof of theft Section 39 of the Indian Electricity Act, 1910 provides that the existence of artificial means for such abstraction is prima facie evidence of such dishonest abstraction as per decision State of Gujarat V. Benji Ranchodji Patala Thakor 1999 (2) Guj. L.R. 1767. For the purpose of Section 44 of the Indian Electricity Act, the existence of the artificial means gives rise to presumption that the meter was prevented from duly registering, but this presumption cannot be imported into Section 39. To make it an artificial means, the tampering must in fact go further and the meter must be converted into an instrument for recording less than the units actually passing through.

83.As a matter of fact, Section 79 of the Electricity Supply Act, 1948, the Electricity Board is empowered to make regulations for its internal administration the clauses (a) to (k) in regard to the administration of the funds and other property of the Board, and the maintenance of its accounts and any other matter arising out of Board's functions under this Act for which it is necessary or expedient to make regulations do not constitute an exhaustive list and the Board is free to make regulations in regard to any matter of internal administration. The Board has been given the autonomy subject to the directions on question of policy which the State Government may issue under Section 78 A Regulations in the nature of subordinate legislations cannot confer authority on the Board to interfere with the contractual rights and obligations unless specified power to make such regulations is vested in the Board by some other provision in the constitute, expressly or by necessary implication. Though dishonest abstraction of electricity cannot be an offence under Section 379 IPC, but due to legal fiction created by Hon'ble Supreme Court, it shall be by virtue of this Section considered to be a theft and presumption can be drawn that it was done dishonestly and unauthorisedly by the consumer as per decision in K.L.Sharma V. State 1996(3) Crimes page 434. Indeed, Sections 39 and 44 of the Indian Electricity Act are to be considered separately for the purpose of Section 26 of the General Clauses Act as per Privy Council Judgment in Babulal Choukhani V. King Emperor AIR 1938 PC 130. It cannot be gainsaid that an authority making an assessment of dishonest abstraction of electricity has to follow the formula described under the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity.

84.The punishment imposed under Section 39 of the Indian Electricity Act, 1910 is in addition to any civil liability which an accused may incur by reason of his wrongful or criminal act and further that Section 48 of the Act clearly specifies that penalties imposed shall be in addition to and not to derogation of any liability in respect of payment of compensation. As a matter of fact, the issue of theft is a pure question of fact and a writ Court cannot record any finding thereon and where the inspection team found cable to have been connected from 11 KVA line to transformer of flour mill by passing meter, it was held that it was not possible for the writ court to record finding in favour of petitioner on the basis of

sealing report of Superintending Engineer and Police report of 'no theft' as per decision in Bareilly Flour Mill (P) Ltd. V. Uttar Pradesh State Electricity Board, Lucknow 2000 (2) All WC 913. The technical rules applicable to prove the theft of a chattel do not apply to proof of this special offence. In fact, Section 39 of the Indian Electricity Act is a major offence and all that is required is that the section which creates a statutory theft sufficiently established against whosoever dishonestly abstracts, uses or consumes energy. In the decision in Phalkan Singh V. State of M.P. 1981 CrL. L.J. at page 57 it is held that Section 39 of the Indian Electricity Act makes dishonest, abstraction and energy of theft offence punishable under Section 379 IPC. Really speaking Section 39 of the Indian Electricity Act is a major offence and all that is required is that the Section which creates a statutory theft sufficiently especially against whosoever dishonestly abstracts, uses or consumes energy.

85. In view of the fact that the Hon'ble Supreme Court has observed in the decision in Hyderabad Vanaspathi Limited V. A.P. State Electricity Board and others (1998) 4 SCC 470 to the effect that the terms and conditions of business framed by statutory body under statutory power are not purely contractual but are statutory in character and that the Board has power to define malpractice and to prescribe an adjudicatory measure for assessing and levying penal damages and as a matter of fact, in exercise of powers under Section 49 of the Electricity (Supply) Act, 1948, the terms and conditions of supply of electricity to consumers clause 39 provides safeguards against pilferage of energy and malpractices by consumers and prescribing machinery for assessing and levying penal charges it is held that the power is empowered to frame terms and conditions of supply which is not violative of any provision of the Act, this Court is of the view that the principles laid down by the Hon'ble Supreme Court as referred to in the decision mentioned above, will squarely apply to the facts of the present case on hand before us and in lieu of the fact that clause 8.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity, August 1995 specifies of any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of the Indian Electricity Act, 1910 and because of the fact that clause 10.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity refers to the category of authorised officers to inspect the service connection to issue show cause notice, make assessment and function as appellate authority in case of violation or theft of energy, the same cannot be construed to be violative of Article 14 or Article 20 of the Constitution of India and therefore, the plea of the petitioner/mill that the adjudicatory power has not been granted to any officer under the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity is not tenable and the same is not accepted by this Court. Moreover, the Clause 8.00 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity speaks of dishonest abstraction or use of energy as deemed to have committed theft and it cannot be said by any stretch of imagination that the Andhra Pradesh Terms and Conditions of Electricity Supply speaks of pilferage and malpractice, which are qualitatively distinct from theft and therefore, the decision of the Hon'ble Supreme Court in Hyderabad Vanaspathi Limited V. A.P. State Electricity Board and

others (1998) 4 SCC 470 will not apply to the facts of our present case, is not accepted by this Court.

86. Besides the above, this Court is of the considered opinion that the process of assessing and levying penal damages is a case of delegation of legislative function and further that the maxim "nemo judex in causa sua" will not apply to the present case since the officers have no personal lis with the consumers and since there is nothing wrong in their adjudicating the matter especially when the consumers may be represented through Advocate and the formula for making provisional assessment is fixed in the clause itself, the contention that board officials have no right to assess or levy, penalty etc. cannot be countenanced and consequently, one cannot find fault with the Clause 8.00 and Clause 10.00 of the Terms and Conditions of Supply of Electricity in Chapter 37 titled Schedule Part I and Appendix VI and VII contained in Chapter 38 titled Schedule part II in respect of Tamil Nadu Electricity Board and the same are statutory in character and are legally sustainable in the eye of law.

87. In fine, for the foregoing discussions and reasons and on taking note of the cumulative facts and circumstances of the case on hand, we are of the view that the writ petition filed by the petitioner/mill is devoid of merits and the same is hereby dismissed in furtherance of substantial cause of justice, leaving the parties to bear their own costs.

W.A.No.343 & 344 of 1998:

In the result, the reasoning of the learned Single Judge in allowing the Writ Petition Nos.9027 and 9028 of 1997 are not correct and the order passed by the learned single Judge in W.P.Nos.9027 and 9028 of 1997 are set aside and resultantly, Writ Appeal Nos.343 and 344 of 1998 filed by the appellants/Board are allowed, leaving the parties to bear their own costs throughout.

W.P.Nos.7417 & 7418 of 2000:

In fine, when the writ petitioner/mill has a remedy to prefer appeal as per clause 11.01 of the Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity etc., then, without exhausting such remedy, the petitioner/mill cannot approach this Court by way of writ jurisdiction and accordingly, W.P.Nos.7417 and 7418 of 2000 filed by the petitioner/mill are dismissed as not maintainable, leaving the parties to bear their own costs. It is open to the petitioner/mill to prefer an appeal before the Appellate Authority as against the order dated 20.03.2000 passed by the second respondent viz., Superintending Engineer/Chennai Electricity Distribution Circle/Chennai, raising all factual/legal contentions and to seek appropriate remedy in the manner known to law, if so advised.

W.P.No.6106 of 2000:

In fine, in the light of detailed discussions and reasons assigned and on taking note of the cumulative facts and circumstances of the case on hand, we are of the view that the writ petition filed by the petitioner/mill is devoid of merits and the same is hereby

dismissed in furtherance of substantial cause of justice, leaving the parties to bear their own costs.

Sgl

To

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Salem Electricity Distribution Circle, Salem.
- 2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Salem Region, Erode.
- 3.Tamil Nadu Electricity Board
Anna Salai, Chennai 600002.
- 4.The Executive Engineer O & M
Tamil Nadu Electricity Board,
Town Thammanna Chetty Road,
Four Road, Salem 9.
- 5.The Superintending Engineer,
Tamilnadu Electricity Board,
Chennai Electricity Distribution Circle,
West, Tirumangalam SS Complex
Thirumangalam, Chennai 600 040.
- 6.The Executive Engineer O & M, Town
Tamilnadu Electricity Board,
1-B, Venkata Rao Road, Salem-636 001.
- 7.Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
Olimohammedpet, Kancheepuram.
- 8.Executive Engineer,
Operations and Maintenance/North
Kancheepuram 2.

4 ccs To M/s. Rugan & Arya, Advocate, SR.1412, 1413, 1415, 1414
2 ccs To Mr.N.Muthuswami, Advocate, SR.1339, 1551

W.A.NOs.343 & 344 OF 1998 and
W.P.Nos.7417, 7418 and 6106 of 2000

SSR(CO)
SRA(23/01/2009)