

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** HON'BLE SRI JUSTICE K. LAKSHMAN**

+ WRIT PETITION No.7130 OF 2020 & Batch

% Delivered on:18-01-2021

Between in W.P. No.7130 of 2020:

M/s. Devashree Ispat Private Limited .. Petitioner

Vs.

\$ The State of Telangana rep.by its Principal
Secretary, Energy Dept., Hyderabad & others .. Respondents

! For Petitioner in respective Writ : 1. Mr. D.V. Nagarjuna Babu
Petitions 2. Mr. M.P. Chandramouli

^ For Respondent Nos.1 to 4 : The Advocate General, repre-
sented Mr.R. Vinod Reddy,
learned Standing Counsel

For Respondent No.5 (TSERC) : Mr. J. Ashwin Kumar
learned Standing Counsel

< Gist :

> Head Note :

? Cases Referred :

1. (1976) 2 SCC 877
2. AIR 1995 SC 1553
3. (2003) 9 SCC 401
4. (2007) 8 SCC 449
5. (2014) 16 SCC 212
6. (2017) 8 SCC 190
7. (2014) 15 SCC 731
8. (2007) 8 SCC 381
9. AIR 1954 SC 44
10. 1960 (2) SCR 793
11. (2017) 14 SCC 80
12. R.C. Rev.447 of 2017 decided on 21.05.2020
13. (1997) 2 ALD 588 (DB)
14. AIR 1989 AP 14
15. AIR 2020 SC 2681
16. AIR 1971 SC 1756
17. (1977) 3 SCC 179
18. W.P. No.7678 of 2020 & batch decided on 14.08.2020

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos.7130, 7148, 7168, 7183, 7185, 7189, 7192, 7202, 7207, 7208, 7236, 7237, 7240, 7310, 7313, 7363, 7376, 7462, 7465, 7466, 7478, 7480, 7531, 7540, 7550, 7552, 7682, 7724, 7778, 7811, 8001, 8011, 8019, 8025, 8116, 8146, 8307, 8521, 8621, 8648, 8712, 8725, 8742, 8881, 8891, 8897, 8914, 8923, 8959, 9108, 9204, 9216, 9230, 9232, 9233, 9424, 9443, 9458, 9531, 9582, 9599, 9671, 9702, 9899, 11413 AND 13885 OF 2020

COMMON ORDER:

Out of the above Writ Petitions, Writ Petition Nos.7130, 7148, 7168, 7183, 7189, 7192, 7202, 7207, 7208, 7310, 7313, 7363, 7376, , 7462, 7466, 7478, 7531, 7540, 7724, 7811, 8001, 8011, 8019, 8116, 8712, 8725, 8742, 8881, 8891, 8897, 8923, 9204, 9232, 9424, 9443, 9458, 9531, 9599, 9671, 9702, 9899, 11413 and 13885 of 2020 relate to challenging the action of respondent Nos.2 to 4 in not collecting maximum demand charges for the month of April, 2020 on pro-rata basis viz., working and non-working periods (closure days) as highly illegal and arbitrary.

2. Whereas, Writ Petition Nos.7185, 7236, 7237, 7240, 7465, 7480, 7550, 7552, 7682, 7778, 8025, 8146, 8307, 8521, 8621, 8648, 8914, 8959, 9108, 9216, 9230, 9233 and 9582 of 2020 relate to challenging the action of respondents in levying and demanding the amount under various head as wholly illegal and arbitrary.

3. CONTENTIONS OF THE PETITIONERS (MAXIMUM):

(i) All the petitioners in the above writ petitions are Companies / Partnership Firms / Proprietary concerns. They are Manufacturing Units / Commercial Establishments. All the petitioners have obtained

High Tension (HT) Service Connections from the respondents' authorities with a contracted maximum demand. The connection numbers and the contracted maximum demand of the petitioners have specifically mentioned in the respective affidavits, and there is no dispute with regard to the same.

(ii) The Telangana State Electricity Regulation Commission (TSERC) has approved the general terms and conditions of the licenses w.e.f. 01.01.2006;

(iii) Due to COVID-19, pandemic, both the Central and the State Governments have issued various orders from time to time declaring the lockdown of various activities including industrial activity / commercial activity under the provisions of the Disaster Management Act, 2005 (for short 'Act, 2005'). On account of the said mandatory orders, according to the petitioners, they have closed down their industrial operations and commercial activities w.e.f. 23.03.2020. The said lockdown restrictions were extended from time to time by both the Central and State Governments.

(iv) Due to the said lockdown restrictions imposed by the Central and State Governments on account of COVID-19 pandemic, the petitioners herein could not operate its industrial activities / commercial activities. There are penal provisions in the proceedings issued by the State and Central Governments and, therefore, the petitioners were compelled to close down its industrial activities and Units.

(v) All the petitioners being subjected to Twin Part Tariff System (TPTS) *i.e.*, maximum demand charges and energy charges.

(vi) For the consumption month of April, 2020, the meter reading was taken by the Officials of the respondents' authorities on 17.03.2020. But, 23.03.2020, on which date, the Central and State Governments have passed orders commencing the lockdown. During the said period, the recorded maximum demand was less than the contracted maximum demand.

(vii) Clause - 2.2.2.35 of the General Terms and Conditions of Supply (GTCS), deals with "Maximum Demand" which is as under:

"twice the maximum number of kilo volt - ampere hours (KVAH) delivered at the point of supply to the consumer during any consecutive 30 minutes during the month in respect of consumer having contracted demand of less than 4000 kVA. However, for the consumer having contracted demand of 4000 kVA and above the maximum demand means four times the maximum number of KVAH delivered at the point of supply to the consumer during any consecutive 15 minutes during the month."

(viii) The meter provided by respondent No.2 in the petitioners' Industrial Unites / Commercial Establishments records both maximum demand and energy used by the petitioners. The maximum demand is that it is four times the maximum number of KVAH at the point of supply to the consumer during any consecutive 15 minutes during the month in respect of the said consumer. Once it records a higher demand, the meter gets stuck up at that particular

level and will not go back till a higher demand over and the above the same is recorded. The energy meter records progressively as per the actual consumption.

(ix) From 17.03.2020 to 23.03.2020, the recorded maximum demand of the petitioner was less than the contracted maximum demand. The petitioners have utilized the lighting load to provide lighting facility to the labour quarters situated in the Industrial Units of the petitioners.

(x) However, without billing the maximum demand on pro-rata basis for the period from 17.03.2020 to 23.03.2020 and 24.03.2020 to 17.04.2020, the TSSPDCL has issued bill mechanically ignoring the force majeure situation.

(xi) The petitioners would have been issued bill on pro-rata basis by charging maximum demand during the working and non-working period.

(xii) For the period in which the petitioners have closed down its Industrial / Commercial activities, the TSSPDCL is not entitled to collect any maximum charges. The petitioners could not consume full maximum demand for the whole of 30 days for the month of April, 2020, and the reasons and circumstances are beyond their control. TSSPDCL without considering the working and non-working period of the petitioners, billed the maximum demand charges arbitrarily. They have collected excess amount from the petitioners.

(xiii) The petitioners through their associations have approached the Principal Secretary, Energy Department of Telangana State, with a request to waive the minimum / maximum demand charges.

(xiv) But, the Principal Secretary has passed temporary orders extending time for the payment of minimum charges till 31.05.2020.

(xv) Falling in line with the order passed by the Principal Secretary, TSERC has also passed orders to the said effect. Almost all the petitioners have submitted representations to the TSSPDCL for revision of bills by billing maximum demand on pro-rata basis by splitting up working and non-working period on account of the force majeure situation. But, there is no response from the TSSPDCL.

(xvi) All the petitioners are power intensive units and their chief raw material is electricity, which constitutes 70% of its raw material components. The activities of their industries are continuous process. They have engaged many workers to carry on the said industrial activities.

(xvii) On account of the abrupt lockdown restrictions imposed by the Central and State Governments due to COVID-19 pandemic, the petitioners have to keep all their workers in idle condition by paying necessary wages to them. The petitioners have been paying a big component of interest to the financial institutions and also the

EMIs. The petitioners are mulcted with liability of paying minimum M.D. charges.

(xviii) The Central Government has announced Rs.20.00 lakh Crores financial packages to various sectors, out of which, sizeable amount of Rs.6,900 Crores has been allocated to support various power distribution companies in the Country. As a consequence of the same, TSSPDCL also gets a huge sum towards its share by way of subvention. Being a public institution, the TSSPDCL cannot pocket the same and utilize the same for the good of its consumers. The TSSPDCL being instrumentality of the State, it cannot subject its consumers with unauthorized and disproportionate levies causing hardship to the industrial growth as is being done by the State Government.

(xix) The levy of maximum demand charges at higher level for whole of the month by ignoring the closure period is illegal and arbitrary, more particularly, when the circumstances are beyond the control of the petitioners. Therefore, the maximum demand charges have to be collected on pro-rata basis.

(xx) As per Section 18 of the Sale of Goods Act, 1930, where there is a contract for sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. By referring to the same, unless goods are ascertained, there is no liquidated liability.

(xxi) The petitioners have placed reliance on the principle laid down by the Hon'ble Supreme Court in **Northern India Iron and Steel Company v. State of Haryana**¹ and **OSEB v. IPI Steel Limited**², wherein the Apex Court has held that on account of the force majeure situation, the maximum demand charges have to be levied on equitable basis.

(xxii) With the said submissions, all the petitioners sought to declare the action of the TSSPDCL in not collecting the maximum demand charges for the month of April, 2020 on pro-rata basis i.e., working and non-working periods (closure days) as illegal.

4. **CONTENTIONS OF RESPONDENT Nos. 1 to 4:**

(i) Respondent No.2 has filed counter denying the contentions raised by the petitioners herein in all the writ petitions.

(ii) The writ petitions are not maintainable on the ground that the petitioners have not disclosed the material facts and, therefore, the same are liable to be dismissed only on the ground of suppressing of facts.

(iii) All the petitioners have entered into an agreement in relation to the power supply with TSSPDCL, and are bound by the terms of the said agreement.

¹. (1976) 2 SCC 877

². AIR 1995 SC 1553

(iv) In the event of any violation of contractual obligations, the TSSPDCL and the petitioners have to approach the concerned Civil Court for the same, instead of doing so, the petitioners have filed the present writ petition under Article 226 of the Constitution of India. In view of the said agreement, there exists contractual relationship between the petitioners and the TSSPDCL. All the petitioners have intentionally suppressed the said fact of entering into agreements with the TSSPDCL.

(v) Respondent No.2 has placed reliance on the principle laid down by the Apex Court in **Vijay Syal v. State of Punjab**³ and **Prestige Lights v. State Bank of India**⁴ in support of its contentions.

(vi) Clause - 8 of the said agreement, deals with ‘obligation of consumer to pay all charges levied by Company, which is as under:

“From the date this agreement comes into force, consumer shall be bound by and shall pay the company maximum demand charges, energy charges, surcharges, meter rents and other charges if any, in accordance with the tariffs applicable and the general terms and conditions of supply prescribed by the Company from time to time for the particular class of Consumers to which consumer belong.”

(vii) Clause - 10 of the said agreement deals with ‘monthly minimum charges’, which is as under:

“Consumer shall pay minimum charges every month as prescribed in tariff and the general

³. (2003) 9 SCC 401

⁴. (2007) 8 SCC 449

terms and conditions of supply even if no electricity is consumed for any reasons whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by consumer even if electricity is not consumed because supply has been disconnected by the Company because of non-payment of electricity charges. Theft of Electricity or unauthorized use of Electricity or for any other valid reasons.”

(viii) In view of the above said Clauses, the petitioners have undertaken to pay the maximum demand charges, energy charges, if any, in accordance with tariffs applicable and the GTCS prescribed by the TSSPDCL from time to time.

(ix) The petitioners are not disputing that TSSPDCL has supplied the power during the lockdown period. But, according to the petitioners, they have not been able to utilize the same in the manner it ought to have been utilized during the lockdown restrictions imposed by both the Central and State Governments.

(x) The petitioners cannot seek to mulct the losses that they may have incurred on the TSSPDCL.

(xi) The governing rules and the GTCS envisage a mechanism and basis to deal with the contractual relationship of the petitioners and the respondents. There is no allegation by the petitioners with regard to any violation of such rules and GTCS by the TSSPDCL.

The relief sought by the petitioners is not traceable to the GTCS and goes beyond the terms and conditions of Power Supply.

(xii) There is no violation of any rule or statute by the TSSPDCL and, therefore, writ petitions are not maintainable.

(xiii) The agreement entered into between the petitioners and the TSSPDCL is silent on the aspect of 'force majeure'. The doctrine of 'force majeure' is to be invoked when the *lis* deals with purely contractual. Doctrine of 'frustration' and 'force majeure' are the aspects which are to be determined on the basis of factual examination. There are several factual aspects to be adjudicated in the above writ petitions and, therefore, the present writ petitions are not maintainable.

(xiv) The Central and the State Governments have issued orders in the month of March, April and May, 2020 under the Epidemic Disease Act, 1897 (for short 'Act, 1897) and the Act, 2005 in view of the COVID-19 epidemic. The Government of Telangana has issued G.O.Ms.No.45, GAD, dated 22.03.2020, notifying the 'lockdown' in the entire State of Telangana with immediate effect and incorporated Regulations. Regulation No.7 incorporated in the said G.O. is as under:

“All shops, commercial establishments, offices, factories, workshops, godowns etc. shall close their operations. However, production and manufacturing units which require continuous process such as pharmaceuticals, API etc. may function. Further,

manufacturing units engaged in production of essential commodities like dal and rice mills, food and related units, dairy units, feed and fodder units etc. will also be permitted to operate.”

(xv) All the petitioners being the HT Industrial Consumers are subjected to TPTS. The TSSPDCL collects two types of charges from the petitioners viz., maximum demand charges for billing demand (i.e., 80% CMD or RMD, whichever is higher) and Energy charges for actual energy consumed or 50 Units per KVA per month for the billing demand whichever is higher.

(xvi) As per Section 62 of the Electricity Act, 2003 (for short ‘Act, 2003’), the Retail Electricity Tariff (RET) shall be determined by the State Electricity Regulatory Commission and the same has to be implemented by the DISCOMS. In view of the same, DISCOMS are not entitled to differ from the Tariff Order issued by the TSERC.

(xvii) As per section 64 (6) of the Act, 2003, Tariff order shall unless amended or revoked, continue to be in force for such period as specified in the Tariff Order. The relevant tariff order for the year 2018-19 is dated 27.03.2018 and the same has been extended by the TSERC vide order dated 06.11.2019 in I.A.No.3 of 2019 in O.P. Nos.21 and 22 of 2017 and further extended by order dated 20.03.2020 in I.A. No.8 of 2020, and as on today, the tariff order for the year 2018-19 is applicable.

(xviii) Section - 2(c) of the A.P. Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2004 (Regulation 5 of 2004) deals with 'consumption charges' and as per which, consumption charges means charges payable for the consumption of electrical energy in Kwhrs multiplied by appropriate tariff rates and also includes Demand/Fixed charges, Fuel Surcharge Adjustment (FSA) and customer charges etc., wherever applicable.

(xix) As per section - 3 (4) of Regulation 5 of 2004, the consumer shall pay, in addition to the charges fixed in the Tariff determined by the Commission, all surcharges, additional charges if any and any other charges payable relating to the supply of energy to the consumer as per the tariff conditions in force from time to time. The Consumer shall also pay all the amounts chargeable by the Government by way of tax/duty etc. to the appropriate authority as specified by the Government. In view of the said regulations, the consumer is liable to pay all the charges as stipulated in the said regulation.

(xx) All the petitioners being HT Consumers are liable to pay the demand charges. In case of Low Tension category, the fixed component is recovered in the name of "fixed charges" levied in rupees/KW, and in case of HT Consumers, it is levied in the name of 'demand charges' in rupees/KVA. The fixed/demand charges shall be levied on the consumer to recover the fixed cost component of Power Purchase Cost payable to the Generators. Intra-State transmission

cost payable to TSTRANSCO, Inter State Transmission Charges payable to Power Grid Corporation of India Limited (PGCIL), wheeling charges of the DISCOMS i.e., TSSPDCL. The fixed/demand charges also include employee expenses, depreciation on assets, interest on loans, repairs and maintenance cost and other administrative and general cost.

(xxi) The DISCOMS have to follow the GTCS in providing electricity connections and the charges to be levied from the consumers, both, Industrial, Commercial and Domestic etc.

(xxii) Clause - 2.2.11 of the GTCS deals with 'contracted maximum demand' and it means the consumer intends to put on the system, as described in Clause - 2.2.35 and is so specified in the supply agreement between the parties.

(xxiii) As per the Tariff Order for the year 2019-20 issued by the TSERC, the billing demand in respect of HT Consumers shall be Recorded Maximum Demand (RMD) during the month or 80% of the Contracted Demand which is higher and the petitioners have been billed for the lockdown period as per the Tariff Order by raising bills for 80% of the Contracted Maximum Demand (CMD) in respect of consumers who have consumed less than the said 80%.

(xiv) The TSSPDCL has created huge infrastructure to supply power to its consumers by raising capital from financial institutions and has to maintain the infrastructure for proper flow and supply of

power and has to incur huge expenses every month for the said purpose. The DISCOMS are also liable to pay the applicable fixed charges to the generators and also transmission charges. The DISCOMS shall have to pay to the generators for the contracted power even if the same is not consumed. Due to the lockdown, the DISCOMS could not utilize the contracted power from the generators, but are liable to pay the cost of power. The provision of minimum charges in the agreement to be paid by the consumer is one of the modes for reasonable return to the DISCOMS for their investments.

(xxv) The Government of Telangana has issued orders for closure of all shops, commercial establishments, offices, factories, workshops, go-downs pertaining to non-essential commodities in view of social distancing for containment of pandemic COVID-19. Therefore, the Industrial Associations have represented to the Government requesting to extend the benefit of waiver of maximum demand charges as was extended to the Micro, Small and Medium Enterprises Units. The said request was considered in the cabinet meeting held on 19.04.2020, and after detailed discussions, the Government has decided to extend the following relief measures to the Industries in Telangana:

“Electricity bills during the lockdown period will be collected as per actual consumption only and the fixed charges for the same period shall be deferred till 31.05.2020 without any penalty and interest. Further, those industries which pay the bills within due date shall get 1 percent rebate of billed amount.”

Accordingly, the Government has issued G.O.Ms.No.4 extending the said relief to the Industries in Telangana State.

(xxvi) The Energy Department vide its letter dated 22.04.2020 has conveyed the decision of the State Government to the TSERC, which in turn vide order dated 23.04.2020 in O.P. No.16 of 2020, has accepted the directions of the Government under Section 108 of the Act, 2003. As per the orders of the TSERC, the electricity bills during the lockdown will be collected as per actual consumption only and the fixed charges for the same period shall be deferred till 31.05.2020 without any penalty and interest.

(xxvii) The petitioners cannot plead that on account of non-usage, they got an accrued right qua the TSSPDCL in relation to the maximum damage charges, since the TSSPDCL also has a corresponding liability on account of the energy supplied to the petitioners.

(xxviii) Due to the lockdown, most of the HT and LT consumers have closed their industries / commercial establishments resulting in huge financial loss to the TSSPDCL due to decrease in sales. The waiver of fixed charges for non-working periods will lead to huge financial losses to the DISCOMS.

(xxix) The doctrine of 'frustration of contract' is not relevant for the purpose of present case. Placing reliance on Section 56 of the Contract Act, 1872 (for short 'Act,1872') is highly misplaced since

the said provision deals with the situation where an agreement to do an act impossible in itself being void. The contract in the present case does not become void and subsists for the period mentioned therein and it is a continuing one. The agreements entered by the petitioners with TSSPDCL do not become impossible on account of the lockdown. As long as the agreements between the petitioners and the TSSPDCL subsist, the TSSPDCL is bound to supply power to the petitioners, who are legally bound to pay for the same. If the petitioners seek to annul the agreements on whatever grounds that may be available to them, proper remedy is to approach the competent Civil Court and not by way of filing the writ petition under Article - 226 of the Constitution of India. The doctrine of 'force majeure' clause cannot be invoked during the lockdown period to grant any exemptions or any reliefs.

(xxx) The TSSPDCL was always ready and willing to supply the entire demand of the petitioners during the lockdown period. Hence, they cannot claim that the demand charges should be applied on pro-rata basis. Moreover, there is no 'force majeure' clause included in the agreement entered into between the petitioners and the TSSPDCL.

(xxxi) The principle held by the Apex Court in **Northern India Iron and Steel Company**¹ is inapplicable to the cases on hand.

(xxxii) In compliance of the order passed by this Court, the State Government of Telangana and the TSSPDCL have considered

the representations of the petitioners and passed detailed orders rejecting the requests of the petitioners.

(xxxiii) With the said contentions, the TSSPDCL sought to dismiss all the writ petitions.

5. Some of the petitioners have filed additional affidavits contending that the Government of India, Ministry of Home Affairs, has issued proceedings dated 29.07.2020 extending the lockdown in containment zones and to reopen more activities in areas outside the containment zones. The same was extended up to 31.08.2020.

6. Some of the petitioners have filed replies to the counter affidavit filed by official respondents.

7. Heard Mr. D.V. Nagarjuna Babu and Mr. M.P. Chandramouli, learned counsel for respective petitioners and the learned Advocate General representing Mr. R. Vinod Reddy, learned Standing Counsel appearing on behalf of the respondents, and also Mr. J. Ashwin Kumar, learned Standing Counsel for respondent No.5.

COVID - 19, PANDEMIC - FORCE MAJEURE

8. In view of the above stated contentions raised by the parties, this Court is of the view that it is necessary to deal with the aspect that whether COVID-19 pandemic is a force majeure?

9. It is not in dispute that the Novel Corona Virus started featuring in the news space following China's confirmation of its

spread in the month of January, 2020, it was considered a novel, elusive actuality. It did not qualify as sufficient cause for concern and alarm which could have potentially sparked much needed preparations. There was steep increase in number of confirmed cases and resultant deaths due to COVID-19 across the globe. Considering the entire aspects, the World Health Organization (WHO) has officially declared the Corona Virus Outbreak as a pandemic on 11.03.2020.

10. The Government of India, in its endeavour to contain the extraordinary outbreak of the Corona Virus and its staggering effects, declared a Nationwide Lockdown. In view of the same, many facets of our system find themselves temporarily inoperative. The disruption of the supply chain is one such inevitable corollary. On the said basis, performances of many existing contracts were interrupted, postponed or cancelled. The Government of India has also declared COVID-19 pandemic as 'force majeure' vide its Notification dated 19.02.2020.

11. The concept of term 'force majeure' has been borrowed from French and the literal translation whereof is 'superior force' in English. The concept of 'force majeure' owes its origin to Roman Law which recognized the principle of '*clausula rebus sic stantibus*' which provides that obligations under a contract are binding so long as the situation exists at the time the contract was entered into fundamentally remains the same. The term 'force majeure' refers to an event or effect that can be neither anticipated nor controlled. Any

event or circumstance which is within the reasonable control of contracting parties does not qualify as force majeure. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled. From a contractual perspective, the concept gains significance in as much as it provides protection to contracting parties in cases of virtual and actual impossibility of performance of contract. Hence, where reference is made to *force majeure*, the intention is to save the performing party from consequences of anything over which he/she/it has no control.

12. The expression 'force majeure' is not a mere French version of the Latin expression 'vis major'. It is, undoubtedly, a term of wider import. Difficulties have arisen in the past as to what could legitimately be included in 'force majeure'. It is relevant to mention that strikes, breakdown of machinery, which, though normally not included in 'vis major' are included in 'force majeure'. Where reference is made to 'force majeure', the intention is to save the performing party from the consequences of anything over which he/she/it has no control. This is the widest meaning that can be given to 'force majeure', and even if this be the meaning, it is obvious that the condition about 'force majeure' in the agreement was not vague. The use of word 'usual' makes all the difference, and the meaning of the condition may be made certain by evidence about a 'force majeure' clause, which was in contemplation of parties.

13. The rulings on the subject shows that where reference is made to ‘force majeure’, the intention is to save the performing party from the consequences of anything of the nature stated above or over which he/she/it has no control, and an event or effect that can be neither anticipated nor controlled. The term includes both acts of nature (for instance, floods and hurricanes) and acts of people (for instance, riots, strikes and wars etc.). A contractual provision allocating the risk if performance becomes impossible or impracticable, especially as a result of an event or effect that, the parties could not have anticipated or controlled.

14. As per Oxford English Dictionary, South Asia Edition, ‘force majeure’ means unforeseeable circumstances that prevent someone from fulfilling a contract, or superior strength, whereas, as per Oxford Advanced Learner’s Dictionary, ‘force majeure’ means unexpected circumstances, such as war, that can be used as an excuse when they prevent somebody from doing something that is written in a contract.

15. Force Majeure is also defined in Black’s Law Dictionary as an event or effect that can be neither anticipated nor controlled. As per the Dictionary, the term includes both acts of nature (for instance floods and hurricanes), and acts of people (for instance, riots, strikes and war).

16. In view of the above said definitions, coming to the present situation, COVID-19 virtually brought economic activity to halt and has disturbed the chain of production, supply and distribution. There was steep increase in number of confirmed cases due to COVID-19 across the Globe. Many Countries have declared lockdown and the entire activity came to stand still. The WHO has officially declared COVID-19 Outbreak as a pandemic. It qualifies as 'force majeure'. The Union of India vide its Notification, dated 19.02.2020, has declared COVID-19 pandemic as a 'force majeure'.

17. The Government of Telangana has issued the Telangana Epidemic Diseases (COVID-19) Regulations, 2020 by invoking the provisions of the powers conferred under it vide the Epidemic Diseases Act, 1897. Accordingly, the Government of Telangana has also issued G.O.Ms.No.45, dated 22.03.2020 imposing lockdown in exercise of powers conferred on it under Section - 2 of the Epidemic Diseases Act, 1897 due to COVID-19 pandemic. The same were extended from time to time and the Government of Telangana has issued GOs from time to time extending the said lock down restrictions. Like-wise, the Union of India has also issued orders imposing lock down in the entire Country.

18. It is relevant to note that vide G.O.Ms.No.45, dated 22.03.2020, the Government of Telangana has directed all the Shops, Commercial Establishments, Offices, Factories, Workshops, Godowns etc., shall close their operations. However, production and

manufacturing units which require continuous process, such as pharmaceuticals, API etc. may function. Further, manufacturing units engaged in production of essential commodities like dal and rice mills, food and related units, dairy units, feed and fodder units etc. will also be permitted to operate. All public transport services including TSRTC buses, SETWIN, Hyderabad Metro, taxis, auto-rickshaws etc. will not be permitted. However, transport of passengers for accessing emergency medical services shall be permitted. Plying of private vehicles shall be restricted only to the extent of procuring essential commodities and activities permitted under the said order. Residents shall stay at home and come out only for permitted activities while strictly observing social distancing norms. In any case not more than one person will be permitted excluding the person driving the vehicle.

19. It is also specifically mentioned in the said G. O. Ms. No.45 that all the District Collectors, District Superintendents of Police, Commissioners of Police, Municipal Commissioners of Corporations and other competent authorities in respect of the concerned institutions, organizations and establishments are hereby authorized and directed to take all necessary measures for enforcement and implementation of the aforesaid regulations and measures. Any person, institution, organization violating any provision of these regulations shall be dealt under the provisions of

the Epidemics Diseases Act 1897, the Disaster Management Act, 2005, regulations issued vide G.O.Ms.No.13, dated 21.03.2020.

20. The Industrial Associations made a representation to the Government of Telangana stating that the industrial units work on a precarious state of finances and any minor disruptions in their regular flow of works will upset their production and cash flows and their overall health is affected. While the loss and difficulties of workers and employees is predictable, it is equally difficult for units and businesses to pay the salaries and wages by taking additional loans while foregoing the production and revenues. Considering the said request, the Government of Telangana has issued G.O.Ms.No.4, dated 22.04.2020 granting certain reliefs to the Industries and as per the same, electricity bills during the lockdown period will be collected as per actual consumption only and the fixed charges for the same period shall be deferred till 31.05.2020 without any penalty and interest. Further, those industries which pay the bills within due date shall get 1% rebate of billed amount.

21. The TSERC, Hyderabad, respondent No.5 herein, has passed orders on 23.04.2020 in O.P. No.16 of 2020 stating that the Commission is inclined to accept the directions of the Government of Telangana under Section - 108 of the Electricity Act, 2003 and is of the view that the TSDISCOMs and the Co-operative Electric Supply Society Ltd., Sircilla (CESS) shall give effect to the orders of the government as suggested in the above mentioned order of the

Government. The Commission at the same time is also conscious of the loss that is occasioned to the TSDISCOMs and CESS due to the reliefs given therein. The TSDISCOMs and CESS are permitted to raise the necessary funds for working capital required to give effect to the above stated reliefs during the period for which the relief is extended. They are required to place the details of the total expenditure incurred towards raising the additional working capital along with the loss sustained by them before the Commission after expiry of the lockdown period. The same will be examined by the Commission at a later date. Accordingly, the Commission has directed the TSDISCOMs and CESS in the state of Telangana to give effect to the directions of the Government of Telangana as referred to above.

22. The TSERC, respondent No.5 herein, by considering Clause 5.9.4.2. of the GTCS, which deals with 'reduction in load', and also the 'force majeure' situation, the request of the Federation of Telangana Chambers of Commerce and Industry, Hyderabad and All India Induction Furnaces Association (South Central Region), passed orders on 29.04.2020 in O.P. No.17 of 2020 relaxing the conditions of GTCS and Standards of Performance (SOP) to the effect that a consumer, if it so desires to avail deration of the contracted load may apply to the licensee and is permitted to exercise Clause 5.9.4.2 of GTCS irrespective of the criteria of completion of minimum period of the agreement as stipulated in GTCS. The distribution licensee shall

upon such request by the consumers, give effect to the request of the consumer, who has exercised clause 5.9.4.2 of GTCS, within five (5) days on receipt of the application from such consumer. In case the deration of the load happens in between the billing cycle in terms of the request of the consumer as per the relaxation given above, the distribution licensee shall endeavour to bill the consumer duly giving effect to the deration, that is billing as per the tariff order up to the date of deration and post deration of the load on the basis of the derated load only. The demand charges shall be levied accordingly on proportionate basis. The TSERC by considering the loss that is occasioned to the distribution licensees due to deration of contracted load, directed the distribution licensees to submit the details of revenue loss on account of this relaxation for examination.

23. By referring to the above, Mr. J. Ashwin Kumar, learned counsel appearing on behalf of the TSERC, would submit that there is no specific relief sought against the TSERC. The duty of the TSERC is that it has to dispose of the representations received. Accordingly, it has already rejected the representations received. Section 86 of the Act, 2003 deals with functions of State Commission. As per the said provision, the State Commission shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. The Regulate Electricity Purchase and procurement process of distribution licensees etc.

24. He has also placed reliance on the principle laid down by the Apex Court in **Paschimanchal Vidyut Vitran Nigam Limited v. Adarsh Textiles⁵** and **Waryam Steel Castings Private Limited v. Punjab State Power Corporation Limited⁶**.

25. In **Adarsh Textiles⁵**, the Apex Court held that the Electricity Regulatory Commission has to consult the State Government before passing any clarificatory order and it was the prerogative of the State Government to extend any benefit of subsidy to any consumer and, therefore, the Commission was bound to act as per the directives of the State Government.

26. In **Waryam Steel⁶**, the Apex Court discussed about the procedure and held that the Electricity Regulatory Commission being is an expert body has the power to amend or alter the rates or surcharge.

27. It is not in dispute that all the petitioners have entered into agreement for supply of electricity at HT with the TSSPDCL. In the agreement, there is no 'force majeure' clause. In the said agreements, the consumers, the petitioners herein, have undertaken to comply with all the requirements of the Electricity Act, 2003, Rules and Regulations framed there-under, provisions of the tariffs scale of miscellaneous and general charges and the general terms and conditions of supply prescribed by the Company with approval of the

⁵. (2014) 16 SCC 212

⁶. (2017) 8 SCC 190

TSERC from time to time and agreed not to dispute the same. They have also agreed to pay all charges levied by the Company. It is further agreed that the Consumer shall pay minimum charges every month as prescribed in tariff and the general terms and conditions of supply even if no electricity is consumed for any reasons whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by the consumers even if electricity is not consumed because supply has been disconnected by the Company because of non-payment of electricity charges, and theft of electricity or unauthorized use of electricity or for any other valid reasons.

28. In view of the above said rival submissions, it is also apt to refer to certain provisions of the Act, 2003, which are relevant to decide the *lis* involved in the present batch of writ petitions. Section 181 of the Act, 2003, deals with ‘powers of State Commissions to make regulations’. There is a duty cast upon the Distribution Licensee under Section 43 of the Act, 2003, to supply power on request of the owner or occupier of any premise. Condition No.8 of the GTCS deals with billing and payment, while condition No.9 deals with unauthorized use of electricity.

29. According to the petitioners, in view of the restrictions imposed by both the Central and State Governments due to COVID-19 pandemic, the petitioners have closed down their industrial / commercial activities. They have utilized the power only for essential

services, such as maintenance, security and labour quarters. For the rest of the month, Units were closed. The electricity meters fixed by the TSSPDCL recorded two components viz., minimum demand charges and maximum demand charges.

30. According to the petitioners, Section - 72 of the Disaster Management Act, 2005 will have overriding effect over the provisions the Act, 2003. The demand is contrary to the Scheme of the Act, 2003. As per Section - 108 of the Act, 2003, the State Government is having power to give directions. It also says that in discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing. As per Section - 60 of the Act, 2003, the State Government is having power to grant subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section - 62 of the Act, 2003. The Government of India has announced Rs.20.00 lakh Crores to various Sections. Accordingly, the TSSPCDL has got Rs.6900 Crores. Though, the said fact was specifically pleaded in the writ affidavit, respondent No.2 did not deny the same in its counter and, therefore, it amounts to admission. In view of the said provisions, it is the duty of the TSSPDCL to convince the State Government. Instead of doing so, the TSSPDCL is levying the demand illegally. As per Section - 56 of the Act, 1872, an agreement to do an act impossible in itself is void.

31. It is further contended by the petitioners that force majeure clause is there in all the agreements. The orders passed by both the Central and the State Governments including the lockdown restrictions are binding on both the petitioners and the TSSPDCL and the same shall continue to apply. As per Section - 61 of the Act, 2003, the appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by following certain principles mentioned therein. Section - 62 of the Act, 2003 deals with determination of tariff. Section - 64 of the Act, 2003 deals with procedure for tariff order. As per Section - 3 of the Andhra Pradesh Electricity Regulatory Commission Act, 1999, regulations were framed. In the counter, respondent No.2 did not mention about the wastage of power and surplus power. As per Article -14 of the Constitution of India, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, more particularly, in Public domain. The doctrine of 'frustration' operates.

32. On the other hand, the learned Advocate General would submit that there is no dispute with regard to the facts and also the basic grounds. Force majeure clause is not therein the agreements and, therefore, the same is not applicable in view of the agreements entered into between the petitioners and the TSSPDCL on specific terms. The doctrine of 'frustration' has no application. As per

Section - 72 of the Act, 2005, the provisions shall have the overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Whereas, in the present case, according to the learned Advocate General, the petitioners and the TSSPDCL have entered into the agreements on specific terms, wherein the petitioners being Industrial / Commercial Establishment Units, have agreed to pay maximum demand charges as per Clause - 8 and 10 of the said agreements. Equality principle has no application. The TSSPDCL has not received any amount from the Central Government though it has announced Rs.20.00 lakh Crores. The principle held by the Apex Court in **Northern India Iron and Steel Company**¹ is not applicable. The writ petitions are not maintainable since all the petitioners have suppressed the true and material facts. In support of the said contention, he has placed reliance on the decision of the Apex Court in **Renu v. District and Sessions Judge, TIS Hazri**⁷. The TSSPDCL has always ready and willing to supply the contracted demand and the petitioners have not utilized the same. Whether they have utilized the contracted power or not, the petitioners have to pay the demand made by the TSSPDCL in terms of the agreement.

33. The learned Advocate General would further contend that the TSERC fixes the tariff. Therefore, the TSSPDCL and the

⁷. (2014) 15 SCC 731

petitioners are bound to comply with the same. As per the agreements entered into between the petitioners and the TSSPDCL and also in terms of GTCS, there is no waiver of maximum demand charges. The power is with the TSERC and, therefore, the TSSPDCL has to obey the orders passed by the TSERC. By considering the contentions raised by the petitioners in their respective representations, the same were dismissed and request was rejected by the Government.

34. The learned Advocate General has placed reliance on the principle of the Hon'ble Supreme Court in **Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd**⁸.

35. In this context, it is apt to refer to Section -32 and 56 of the Contract Act, 1872 with illustrations, so as to decide the *lis* involved in the present batch of writ petitions, which are as under:

“32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract

⁸. (2007) 8 SCC 381

cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.”

“56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.— Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.

Illustrations

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void."

36. In view of Section - 32 of the Act, 1872, the contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void. As stated above, there is no 'force majeure' clause in the agreements entered between the petitioners and the TSSPDCL. Therefore, Section - 32 of the Act, 1872 is inapplicable to the facts of the present case. Whereas, Section - 56 of the Act, 1872 has two limbs, viz.,(i) a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful; (ii) an agreement to do an act impossible in itself is void. As stated supra, there is no 'force majeure' clause in the agreements entered into between the petitioners and the TSSDCL.

37. Section - 56 of the Act, 1872 and also the doctrine of 'frustration' fell for consideration before the Hon'ble Supreme Court in **Satyabrata Ghose v. Mugneeram Bangur and Company**⁹. The

⁹. AIR 1954 SC 44

Apex Court after referring to various judgments including the English Law held that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. The Apex Court also referred to the decision in **Matthey v. Curling [L.R. (1922) 2 A.C. 110 at 234]**, wherein the Lord Atkinson said that “a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or the King's enemies..... or vis major”.

38. The Apex Court further held that, that being the legal position, a contention in the extreme form that the doctrine of frustration as recognized in English Law does not come at all within the purview of Section 56 of the Indian Contract Act cannot be accepted. If and when there is frustration, the dissolution of the contract occurs automatically. It does not depend as does recession of the contract on the ground of repudiation or breach, or on the choice or election of either party. It depends on the effect of what has actually happened on the possibility of performing the contract.

39. As discussed supra, the Apex Court in **Satyabrata Ghose**⁹ while explaining the concept of frustration in contract law has held

that the word ‘impossible’ has not been used with respect to physical or literal impossibility. Where an unexpected occurrence or change in circumstances decimates the very objective of the contract the same may be considered as ‘impossibility’ to do as agreed. An existing contract shall cease to bind the contracting parties only when consideration of the terms of the contract, in the light of the circumstances existing when it was entered into, shows that there was no agreement to be bound in a fundamentally different and unexpected situation. The performance of a contract is never discharged merely on the ground that the same may become onerous to one of the parties, and the said principle was held by the Apex Court in **Alopi Parshad & Sons Ltd v. Union of India**¹⁰.

40. It was further held that the contract of sale for a chunk of land was not frustrated and performance thereunder could not be said to be rendered impossible under Section - 56 of the Act, 1872 merely because the said land had been requisitioned by the Government for military purposes during the Second World War. The Apex Court even went ahead to observe that during the war, the parties could naturally anticipate restrictions of various kinds which would make performance under contracts more difficult than in times of peace and therefore, the requisitioning of the land which formed the subject matter of the contract of sale could not be said to affect the

¹⁰. 1960 (2) SCR 793

fundamental basis upon which the agreement rested or strike at the roots of the adventure.

41. In **Alopi Parshad & Sons Ltd.**¹⁰, the claim of the appellant for enhanced prices for supply of ghee for Army personnel during the second world war was rejected by the Supreme Court despite enormous scarcity and enhanced procurement expenses owing to conditions of war and it was categorically held by the Court that the parties to an executory contract are often faced with a turn of events which they did not at all anticipate, such as, an abnormal rise or fall in prices, a sudden depreciation of currency etc. However, the same does not *per se* affect the bargain they have made.

42. A similar issue fell for consideration before the Apex Court in **Energy Watchdog v. Central Electricity Regulatory Commission**¹¹. The Apex Court after referring to various judgments rendered by it including the principle laid down in **Satyabrata Ghose**⁹ and also examining clauses of the agreement therein, held that neither was the fundamental basis of the contract dislodged nor was any frustrating event, except for a rise in the price of coal, excluded by Clause - 12.4, pointed out. Alternative modes of performance were available, albeit at a higher price. This does not lead to the contract, as a whole, being frustrated. Consequently, neither Clause - 12.3 nor 12.7, referable to Section - 32 of the Contract Act, will apply so as to enable the grant of compensatory tariff to the respondents therein. On

¹¹. (2017) 14 SCC 80

facts of the said case, the Apex Court held that when a contract contains a force majeure clause which on construction by the Court is held attracted to the facts of the case, section - 56 can have no application.

43. Thus, the Apex Court has categorically held that in case the contract itself contains an express or implied term relating to a 'force majeure' condition, the same shall be governed by Section - 32 of the Indian Contract Act. Section - 56 deals with impossibility of performance would apply in cases where 'force majeure' event occurs outside the contract. The Apex Court at paragraph No.34, has categorically held that 'force majeure' is governed by the Indian Contract Act, 1872. In so far as it is relatable to an express or implied clause in a contract, such as the PPAs therein, it is governed by Chapter - III dealing with the contingent contracts, and more particularly, Section - 32 thereof. In so far as a force majeure event occurs *de hors* the contract, it is dealt with by a Rule of positive law under Section - 56 of the Contract."

44. Thus, in agreement providing for a 'force majeure' clause, the Court would examine the same in the light of Section - 32 of the Act, 1872. The said clause could be differently worded in different contracts, as there is no standard draft, application or interpretation. The fundamental principle would be that if the contract contains a clause providing favourable etc., Section - 32 applies. The force majeure clause in the contract could also be a contingency

under Section - 32, and the party can claim that the contract has become void.

45. In the absence of a contract or a contractual term which is a 'force majeure' clause or a remission clause, the petitioners herein, the consumers of electricity, may attempt to invoke the doctrine of frustration of contract or impossibility of performance. As discussed above, the doctrine of impossibility of performance is encapsulated in Section - 56 of the Act, 1872. The Apex Court after considering the law on 'impossibility of performance' from various jurisdictions, held that in Indian context Section - 56 lays down a positive rule relating to frustration of contracts and the Courts cannot travel outside the terms of that section.

46. The Apex Court also observed that the rise in price of coal consequent to change in Indonesian Law, which though admittedly rendered the contract commercially impossible, was not treated as a force majeure event by it, the Apex Court as neither was the fundamental basis of the contract, which in this case was to generate and supply energy from coal, was shown to be dislodged nor was any frustrating event, except for a rise in the price of coal, pointed out. On the contrary, the Court observed that where alternative modes of performance of obligations under the contract were available, albeit at a higher price, the same could not be treated to have been frustrated.

47. The Apex Court had an occasion to examine the scope and ambit of Section 63 of the Act, 1872 and also the powers of the Regulatory Commission to determine the tariff. The Apex Court also had an occasion to deal with Sections - 56 and 32 of the Act, 1872 and the Specific Relief Act and also the force majeure events and the doctrine of 'frustration'. The Apex Court has also referred to the principle held by it in **Satyabrata Ghose**⁹ and held that Section 56 of the Act, 1872 is exhaustive of the law as it stands in India. What was held was that the word "impossible" has not been used in the Section in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do.

48. It was further held that where the Court finds that the contract itself either impliedly or expressly contains a term, according to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with under Section - 32 of the Act. If, however, frustration is to take place *de hors* the contract, it will be governed by Section - 56 of the Act.

Thus, the Apex Court affirmed the principle held in **Satyabrata Ghose**⁹.

49. The Apex Court held that allocation and assumption of risk is not simply a matter of express or implied provision but may also depend on less easily defined matters such as “the contemplation of the parties”, the application of the doctrine can often be a difficult one. In such circumstances, the test of “radically different” is important; the doctrine is not to be lightly invoked; mere incidence of expense or delay or onerous-ness is not sufficient; and there has to be as it were a break in identity between the contract as provided for and contemplated and its performance in the new circumstances.

50. In **Ramanand v. Dr. Girish Soni**¹², the Delhi High Court dealt with the waiver of rent to be the tenants and after referring to various judgments of the Apex Court including **Energy Watchdog**¹¹, Sections - 32 and 56 of the Act, 1872 held that there is no rent agreement or lease deed between the parties and hence Section - 32 of the Act, 1872 has no applicability. Section - 56 of the Act, 1872 does not apply to tenancies therein.

51. The Delhi High Court referring to the principle held by the Apex Court in **Energy Watchdog**¹¹ and also referring to Section - 56 of the Act, 1872, held that Section 56 of the Act, 1872 does not apply to the tenancies since there is no rental agreement or lease between the

¹². R.C. Rev.447 of 2017 decided on 21.05.2020

parties and hence Section 32 of the Act, 1872 is applicability. The case in the said decision is governed by the provisions of the Delhi Rent Control Act, 1958.

52. The Apex Court had an occasion to deal with the force majeure clause in **Northern India Iron and Steel Company**¹ and held that the inability of the Electricity Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The monthly demand charge for a particular month will have to be assessed in accordance with sub-clause (b) of clause 4 of the tariff and therefore from a proportionate reduction will have to be made as per sub-clause (f). In the said case, the company has passed an order under Section - 228 of the Indian Electricity Act, 1910. Due to the said circumstance which was beyond its control and which was considered by the Board in supplying the power, it is entitled to a proportionate reduction of demand charges. In **IPI Steel Ltd.**², the Apex court has taken the very same view.

53. In **Sri Vishnu Cements Ltd., Nalgonda District v. A.P. State Electricity Board, Hyderabad**¹³, a Division Bench of High Court of Andhra Pradesh had held that in **Northern India Iron and**

¹³. (1997) 2 ALD 588 (DB)

Steel Company¹, there was a force majeure clause. In Clause 13 of the agreement in the said case clearly provided “for the proportionate reduction of the annual minimum guarantee bills when energy was not supplied by the Bihar State Electricity Board”. It is not in dispute that there was no similar terms and conditions in the agreement framed by the Andhra Pradesh State Electricity Board. On the other hand, every consumer is required to pay the charges based on the 80% of the contracted demand even though that much of energy was not taken by the petitioner whatever be the reason. In the absence of force majeure clause or Clause 13 referred to in the above decisions, the petitioner cannot claim proportionate charges based on the actual demand reached by the petitioner.

54. The Apex Court has relied upon the principle held by it in **Bihar State Electricity Board v. Allied Refractories (Pvt.) Ltd. [(1996) 7 SCC 491]**. In the said judgment, it was held that under Section 49 of the Act, an agreement had been entered into by the consumer with the appellant to pay minimum guarantee of charges to the Board. On failure to consume the minimum guaranteed level of electricity due to non-supply of electricity by trippings, load sheadings or power cuts, the consumer would be entitled to make an application for proportionate reduction of the minimum guarantee. Since respondents had not made such an application, the High Court was not justified in straight away allowing the writ petitions and directing the grant of the proportionate reduction.

55. In **Grindwell Norton Ltd v. A.P.S.E. Board, Hyderabad**¹⁴, a Division Bench of High Court of Andhra Pradesh by referring to the decision in **Northern India Iron and Steel Company**¹, observed that there is no clause in the agreement, like condition 4 (f) of Haryana, considered by the Apex Court in **Northern India Iron and Steel Company**¹, which relieves the petitioner of the obligation to pay the monthly minimum charges, on account of interruptions. On the contrary, according to condition No.41, which constitutes a term of the agreement between the parties, while the Board should endeavour to afford continuous supply and to restore interrupted service as early as possible, the Board is given the right to stagger or curtail supply of electricity to any consumer or consumers, according to operational or other contingencies. Clause - 41, therefore, clearly contemplated interruptions occurring, which, no doubt, have to be attended to, and supply restored as early as possible. It is also contemplated situations where the supply of energy has to be curtailed, or staggered. This may be necessary both for operational reasons, as well as other contingencies arising. In all such cases, it is declared that the Board shall not be responsible for any loss or inconvenience occasioned to any consumer by interruption of supply of any kind, whatever be the reason therefor. This condition was there even when the petitioner applied for supply of power, and when it entered into the agreement. Indeed, as stated above, this condition constitutes a term of the agreement between the parties. In such a

¹⁴. AIR 1989 AP 14

situation, it is difficult to say that merely because there were interruptions now and then, or that there was curtailment of supply on certain occasions, the petitioner is relieved of its obligation to pay the monthly minimum charges, undertaken by it under clause - 11 of the agreement read with condition No.33. It is not suggested that the interruptions or curtailments are the result of any deliberate or *mala fide* action or attitude on the part of the Board or its authorities. Admittedly, they are for reasons beyond the control of the Board. By referring to the decision in **Northern India Iron and Steel Company¹, Bihar State v. Dhanawat Rice & Oil Mills [(1989) 1 SCC 452]**, the Division Bench further held that there is no arbitrariness or unreasonableness in requiring the petitioner to pay the demand charges on the basis of the quota demand fixed.

56. The doctrine of frustration also fell for consideration before the Apex Court. A Three-Judge Bench of the Apex Court in **National Agricultural Co-Operative Marketing Federation of India v. Alimenta S.A.¹⁵** after dealing with the principle laid down by it in **Satyabrata Ghose⁹, Energy Watchdog¹¹** and other judgments and also the Clause - 14 of the agreement therein, categorically held that in Clause - 14 of the agreement therein, it was contemplated that during the contract if there is any prohibition of the export or any other executive or legislative Act by or on behalf the Government of the Country of origin, the unfulfilled part of the contract shall be

¹⁵. AIR 2020 SC 2681

cancelled. Because of the refusal by the Government, it was not permissible to the NAFED to make a supply to the Alimenta S.A. Hence, the unfulfilled part was required to be cancelled. Thus, NAFED was justified in not making the supply as it would have violated the Export Control Order, and it was not permissible to carry forward the quantity of the previous year to the next year because of the Export Control Order without permission of the Government. Because of the clear stipulation in Clause - 14 of the Agreement, it is apparent that the parties have agreed for a contingent contract.

57. It was further held that they knew very well that the Government's Executive, or Legislative actions might come in the way as provided in Clause - 14 of the Agreement. Thus, in this case, Section - 32 of the Contract Act is attracted and not the provisions of Section - 56. It was an agreement to do an act impossible in itself without permission, and that is declared to be void by Section - 32. The contract was capable of being performed in case the Government gave the requisite authorization. It is not an event that was not in contemplation at the time of entering into the agreement. Government permission was necessary. Section - 56 is not attracted as the promisor and promisee both knew the reason in advance as in agreement such a contingency was provided itself in case of Government's executive order comes in the way, for cancellation of the contract. Thus, the contract became void on the happening of the contingency, as provided in Section - 32 of the Contract Act.

58. Thus, if the force majeure clause is enshrined in the contracts, which refers to a pandemic or an epidemic, the same may be pleaded and urged by contracting parties where performance of the contract entered between them has become practically and commercially impracticable on account of COVID-19 outbreak. Where a contracting party seeks to claim relief under the force majeure clause, the occurrence of one of the events set out in the force majeure clause is needed to be proved and the burden of proof lies on the party which invokes the force majeure clause. In contracts where the force majeure clause explicitly covers pandemics and epidemics or situations arisen by responses to the pandemic or epidemic, the discharge of the aforementioned burden remains fairly uncomplicated. However, complications arise in a scenario where a force majeure clause simply uses the phrase ‘event beyond the reasonable control of parties’. To facilitate swift and favourable discernment of disputes, it becomes vitally important for the party invoking the force majeure clause to maintain any and all documents related to the event in question which may prove to be consequential in the ascertaining process. In regard to this discussion, the said documents may include (i) any notification and/or guideline issued by the national and/or state governments imposing restrictions on trade; (ii) definite forms of information from reliable media sources related to COVID-19 outbreak, restrictions on public movement and/or mandatory shutdown of modes of travel; (iii) documents revealing any

cancellations disrupting travel itinerary, such as cancelled / rejected visa etc.

59. If the force majeure clause is not enshrined in the contract, when an event which is not mentioned in the contract takes place which frustrates the very purpose thereof, the provision contained in Section - 56 of the Act, 1872 shall come into play.

60. In **Smt. Sushila Devi v. Hari Singh**¹⁶, the Apex Court held that the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section - 56 of the Indian Contract Act. Section - 56 applies only to cases of physical impossibility and that where this section is not applicable recourse can be had to the principles of English Law on the subject of frustration is not correct. Section - 56 of the Indian Contract Act lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. The impossibility contemplated by Section - 56 of the Contract Act is not confined to something which is not humanly possible. If the performance, of a contract becomes impracticable or useless having regard to the object and purpose the parties had in view then it must be held that the performance of the contract has become impossible. But the supervening events should take away the basis of

¹⁶. AIR 1971 SC 1756

the contract and it should be of such a character that it strikes at the root of the contract.

61. In **Reliance Energy Ltd**⁸, the Apex Court had an occasion to deal with the powers of Regulatory Commission. It held that the Regulation Commission is having power to issue directions to the licensees / distribution companies requiring compliance with conditions of license and statutory provisions. It was held that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. The Apex Court after referring to Section 86 of the Act, 2003, held that it does not include in it an individual consumer. The proper forum for that is Section - 42 (5) of the Act and, thereafter, Section - 42 (6) read with Regulations of 2003.

62. In **Govindbhai Gordhanbhai Patel v. Gulam Abbas Mulla Allibhai**¹⁷, the Apex Court held that where the performance of a contract becomes impossible if it becomes impracticable from the point of view of the object and the purpose which the parties had in view and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor found it impossible to do the act which he promised to do. The Apex Court has also referred to Sections 56 and 63 of the Act, 1872, and held that the parties are governed purely by Section - 56 of the Contract Act according to

¹⁷. (1977) 3 SCC 179

which a contract becomes void only if something supervenes after its execution which renders it impracticable.

63. In **South India Spinners Association v. the Chairman - cum - Managing Director, Tamil Nadu Generation & Distribution Corporation Limited & batch**¹⁸, the Madras High Court by referring to the principle held by the Apex Court in **PTC India Ltd. v. CERC [(2010) 4 SCC 603]** and **Reliance Infrastructure Ltd v. State of Maharashtra [(2019) 3 SCC 352]**, held that COVID-19, pandemic is a force majeure. It has declared the action of TANGEDCO in not demanding maximum demand charges on pro-rata basis as illegal and unconscionable. It was further held that the pandemic situation has been recognized by the Government of India through its Office Memorandum dated 19.02.2020 to fall within the term “force majeure”. This situation obviously is something beyond human control. The government has to take certain drastic steps to control the situation and therefore orders were issued from time to time under the Act, 1897 and Regulations made thereof as well as the Act, 2005. Stringent restrictions were imposed from 24.03.2020 and a complete lockdown was imposed across the State and all industrial establishments, commercial and private establishments were asked to close down. The only exception that was given by the Government was with regard to the essential services.

¹⁸. W.P. No.7678 of 2020 & batch decide3d on 14.08.2020

64. By referring to the same and also to various Clauses of tariff orders applicable in the State of Tamil Nadu, the Madras High Court further held that the Government started partially lifting the lockdown in a phased manner in certain industries situated in certain parts of the State. Even today, certain establishments, such as cinema theatres, malls, convention halls continue to be inoperative since the lockdown has not been lifted for these establishments and the same is going to continue till the end of this month. It does not require any detailed deliberation to understand this situation and the very Government Orders passed during the relevant period makes it very clear. It is to deal with a situation like this, a proviso has been brought in to Regulation 6 (b) of the Supply Code. Under normal circumstances, a certification may be required by each consumer to prove that they were prevented from consuming electricity due to situations beyond their control. In the present scenario, insisting for such a certification itself becomes absurd since a certificate will be insisted upon for a situation about which everyone is aware. Insisting for a certification will be a futile formality in a situation like present situation. By referring to the same, the Madras High Court held that it is not in agreement with the submissions made by the TANGEDCO that the discretion is left with the TANGEDCO for deciding the applicability of the Minimum Charges even in a case which fulfils the requirements of the proviso to Regulation 6 (b) of the Supply Code. It was also held that the HT consumers were actually caught between the devil and deep sea. On the one hand the government asked them

to shut down their establishment and on the other hand TANGEDCO was levying the Maximum Demand from the consumers. If this is allowed to be continued, it will virtually lead to permanent shutting down of the industries. The financial crunch that is being faced by almost all industries due to the lockdown and the huge challenge they are going to face post the pandemic is now made worse by TANGEDCO by levying the Maximum Demand Charges. TANGEDCO must understand that its attitude will kill the industries and closing down of industries will ultimately have a financial implication on TANGEDCO also. And TANGEDCO was virtually killing the goose that was laying the golden eggs.

65. As discussed supra, COVID-19, pandemic is a force majeure. The Union of India has declared it as a force majeure vide its Notification dated 19.02.2020. COVID-19 virtually brought economic activity to a halt and has disturbed the chain of production, supply and distribution. However, it would be extremely difficult, if not impossible to prove beyond reasonable doubt that disruptions qua unprecedented outbreak of COVID-19 pandemic have radically and irreversibly dislodged the very bargain contemplated in a contract, particularly in view of the temporariness of such disruptions or for that matter the full probability of resumption of the pre-Corona times. Mere inconveniences, difficulty, pause or delay in performance of obligations under a contract owing to COVID-19 pandemic and its

consequential restrictions would not hold ground to treat the same as a force majeure event.

66. Thus, in view of the ratio laid down by the Apex Court in the aforesaid judgments, since there is no force majeure clause in the agreements, Section - 32 of the Act, 1872 does not apply. However, Section - 56 of the Act, 1872 operates and the doctrine of 'frustration' is applicable.

67. The sum and substance of the contentions of the petitioners in the entire batch of cases is that they are H.T. Consumers and they were prevented from consuming electricity due to circumstances beyond their control. Therefore, they were forced to close their Industrial / Commercial Units. There are penal provisions in the lock down restrictions imposed by the Central and State Governments. Thus, they have not consumed the electricity.

68. On the other hand, the sum and substance of the contentions of the TSSPDCL is that it has been purchasing the power from Generators and it was ready to supply the electricity as per the contracted power. It has expressed its readiness and willingness to supply the electricity. It has paid the cost to the generators. Thus, the petitioners, consumers, have to pay the contracted maximum demand and minimum demand as per the agreements entered between the petitioners and the TSSPDCL and also as per GTCS.

69. As stated above, the agreements entered into by the petitioners, the consumers are silent on the aspect of 'force majeure', and the doctrine of frustration and the force majeure are the cases which are to be determined on the basis of factual examination. As stated above, the COVID-19 pandemic is a force majeure as declared by the Government of India. In view of the same, the contention of the TSSPDCL that the agreements entered into between the petitioners and the TSSPDCL are silent on the aspect of force majeure and the doctrine of frustration are to be invoked when the *lis* deals with purely contractual matter cannot be accepted. It is also relevant to note that the State of Telangana, on one hand, issued proceedings asking all the Industrial / Commercial activities to be closed and thus prevented the consumers from consuming electricity, and on the other hand, it cannot claim that it is ready to supply the power etc. Thus, the contentions of the TSSPDCL are self-contradictory.

70. As held by Madras High Court in **South India Spinners Association**¹⁸ the HT consumers were actually caught between the devil and deep sea. On the one hand the Government asked them to shut down their establishment and on the other hand TSSPDCL was levying the Maximum Demand from the consumers. If this is allowed to be continued, it will virtually lead to permanent shutting down of the industries. The Madras High Court further held that the financial crunch that is being faced by almost all industries due to the lockdown and the huge challenge they are going to face post the pandemic is

now made worse by TANGEDCO by levying the Maximum Demand Charges. TANGEDCO must understand that its attitude will kill the industries and closing down of industries will ultimately have a financial implication on TANGEDCO also. And TANGEDCO was virtually killing the goose that was laying the golden eggs.

71. With the said discussion, the Madras High Court held that the maximum demand charges and the consumption charges levied by TANGEDCO against the HT Consumers is illegal, unsustainable and in violation of the statutory regulations, and accordingly, the Maximum Demand Charges and the compensation towards low PF that have been questioned in the impugned bills raised by the TANGEDCO for each of the consumers who are parties in the batch of writ petitions, is by quashed with certain directions, which are as under:

“a) TANGEDCO shall issue a revised bill to the petitioners by applying Regulation 6 (b) of the Supply Code for the entire period when the establishment was under shut down;

b) If TANGEDCO has already recovered the entire dues from any of the petitioners, the bill shall be reworked in accordance with the direction given in Clause (a) and the excess amount shall be adjusted towards the future bills;

c) If the demand made by TANGEDCO has been adjusted from the security deposit and any of the petitioner has been asked to pay any amount towards additional security deposit on that count, the said claim shall be withdrawn forthwith and the calculation of the additional security deposit shall be independently done under Regulation 5 of the Supply Code and demand/ adjustment shall be done in accordance with the said Regulation;

d) The TANGEDCO shall not levy compensation charges towards low PF from the petitioners during the period of lockdown. Even if such levy is made in future, show cause notice shall be issued to the consumer and an opportunity shall be given to the consumer before levying any compensation under Clause 6.1.1.6 of the Tariff Regulation;

e) If any amount has already been recovered towards levy of compensation charges for low PF from any of the petitioners, the said amount shall be adjusted towards future bills;

f) These directions will apply only for the period during which the establishment was under total lockdown due to the orders issued by the Government and it is made clear that it pertains only to the Minimum Charges payable under Regulation 6(b) of the Supply Code and there is no exemption or concession insofar as the charges payable for the actual consumption of electricity (Energy Charges); and

g) If any of the establishments continue to be under lockdown due to the Government Orders passed in this regard, the minimum charges alone shall be collected till the lifting of the lockdown.”

72. Therefore, the contention of the TSSPDCL that the petitioners herein have agreed to pay all the charges levied by the Company and the Company's right to vary terms and conditions of the agreement and the Consumers have to pay monthly minimum charges etc. in accordance with the GTCS is not acceptable.

73. The TSSPDCL shall appreciate the fact that running an Industry / Business by any consumer is not that easy. It has to make investment, face labour, pollution and other problems. It has to pay taxes to the departments concerned and also loans to the financial institutions apart from making statutory payments. In the said process, Industries / Commercial Establishments are being suffered in

many ways including Government Policies, Labour issues, Pollution issues and some times with man-made force majeure, such as *dharnas*, riots, agitations, strikes etc. The TSSPDCL without appreciating the said aspects, levying maximum demand charges and without considering the requests of the consumers that they have to collect maximum demand charges on pro-rata basis i.e., working and non-working days (closure days). The said approach of the TSSPDCL is unsustainable.

74. The contention of the TSSPDCL is that it would follow the instructions / orders issued by the State and the TSERC. The TSERC has considered the requests of the consumers and also the reduction or deration as specifically mentioned in Clause - 5.9.4.2 of the GTCS and passed certain orders dated 23.04.2020 and 29.04.2020. The consumers without applying for deration of power in compliance of the said orders passed by the TSERC in O.P. Nos.16 and 17 of 2020, dated 23.04.2020 and 29.04.2020 respectively, approached this Court straightaway.

75. As stated above, COVID-19 pandemic is a force majeure. Nobody knows when normalcy is going to be restored. Both the Central and the State Governments have issued lock down restrictions by invoking the powers under Epidemic Diseases Act, 1897. Therefore, the petitioners, HT consumers, are not in a position to apply for deration of power. In Clause 5.9.4.2 of the GTCS, specific procedure is laid down with regard to reduction or deration of power.

It is an uncertain situation. Therefore, the petitioners, HT Consumers, cannot be expected to apply for reduction or deration of power, and once normalcy is restored, it can again approach the TSSPDCL with a request to restore the normal power. The said exercise is not within the purview of the petitioners, HT Consumers. The TSSPDCL without appreciating the said fact, insisting the petitioners to comply with the orders of the TSERC mentioned above. Thus, the said approach of the TSSPDCL is not appreciable. The TSSPDCL being instrumentality of the State is expected to be reasonable towards its consumers. In the present case, the TSSPDCL is unreasonable and it is not expected to.

76. It is also relevant to note that when the matters were listed for admission, the learned Standing Counsel for TSSPDCL has submitted that the petitioners have to make a similar representation to the State Government and the TSERC and it is for them to consider and pass appropriate orders. In view of the said submission, this Court has passed interim order granting liberty to the petitioners to make similar representations to the State Government and the TSERC. The State Government and the TSERC were also directed to consider the representations and dispose of the same within a period of ten days. Accordingly, they have passed orders rejecting the request of the petitioners and requested the petitioners to pay the balance amount.

77. In view of the aforesaid contention, the reasons given by the State Government, TSSPDCL and the TSERC in the orders passed by it are not satisfactory and the same are unsustainable in law, more particularly, in view of the law laid down by the Apex Court in **Satyabrata Ghose**⁹, **Energy Watchdog**¹¹ and **Alimenta S.A.**¹⁵.

78. In view of the above discussion, the action of the respondents in not collecting the maximum demand which is on pro-rata basis i.e., working and non-working period (closure days) is illegal and contrary to the law laid down by the Apex Court.

MINIMUM DEMAND CHARGES:

79. In view of the above discussion, it is apt to refer to Section - 72 of the Act, 2005, which is as under:

“72. Act to have overriding effect.—The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

Thus, the provisions of the Act, 2005, are having over-riding effect. In view of the same, the contention of the TSSPDCL that the petitioners cannot claim that the agreements entered into by the

petitioners, HT Consumers, do not become impossibility on account of the lock down, as long as the relation between the petitioners and respondent No.2 subsists, respondent No.2 is bound to supply power to the petitioners and the petitioners are liable to bound to pay the same etc. is unsustainable. The provisions of the Act, 2005 is having over-riding effect to the provisions of the Electricity Act, 2003 and GTCS and the terms and conditions of the agreement for supply of power entered into between the petitioners, HT Consumers, and the TSSPDCL. As discussed supra, the lockdown restrictions were imposed by the State of Telangana by invoking the powers vested upon it under Section - 2 of the Act, 2005, which is having over-riding effect.

80. Thus, the contention of the TSSPDCL that the petitioners' claim that maximum demand charges for the month of April, 2020 should be collected on pro-rata basis i.e., working and non-working charges (closure days) is not tenable and goes beyond the GTCS and the regulations framed under the Act, 2003 is also unsustainable. Union of India vide its Notification, dated 19.02.2020, has declared COVID-19 pandemic as a 'force majeure'. Due to COVID-19 pandemic, the Central Government and the State Governments have issued various orders from time to time declaring the lockdown of various activities including industrial activity under the provisions of the Act, 2005. On account of the said mandatory orders, according to the petitioners, they have closed down their industrial operations

w.e.f. 23.03.2020. The said lockdown restrictions were extended from time to time by both the Central and State Governments.

81. It is also relevant to note that considering various aspects, more particularly, the situation of COVID-19 pandemic and the mitigating impact thereof, and also the problems being faced by the electricity consumers, the Government of Punjab vide proceedings dated 07.04.2020, granted certain reliefs to the electricity consumers including the relief that fixed charges for Medium Supply (MS) and Large Supply (LS) Industrial Consumers be exempted for next two months from 23.03.2020 and energy charges may be fixed to commensurate with reduction in fixed charges (single rate), and revised energy charges would be paid by consumers and not to be considered for subsidy.

82. It is also relevant to note that the State of Gujarat has struck a balance by granting concessions to consumers during the pandemic crisis and the electricity charges have been directed to be collected as per the consumption till normalcy is restored. By referring to the same and also various other aspects, the Madras High Court in **South India Spinners Association**¹⁸, held that similar formula can be adopted by the State of Tamil Nadu also and the TANGEDCO can be directed to collect the recorded demand till normalcy is restored.

83. In view of the above discussion, it is also declared that the action of the TSSPDCL in levying and demanding the minimum

charges, both on the maximum demand and energy during the closure period on account of COVID-19 restrictions from the petitioners - HT Consumers as illegal.

84. To sum up, the Writ Petitions are allowed with the following findings /directions:

- (a) COVID-19 pandemic is a force majeure;
- (b) since there is no force majeure clause in the agreements, Section - 32 of the Act, 1872 does not apply. However, Section - 56 of the Act, 1872 operates and the doctrine of 'frustration' is applicable.
- (c) the action of the TSSPDCL in not collecting the maximum demand charges on pro-rata basis i.e., working and non-working days (closure days) as illegal;
- (d) the action of the TSSPDCL in levying and demanding the minimum charges, both on the maximum demand and energy during the closure period on account of COVID-19, pandemic restrictions from the petitioners - HT Consumers, as illegal;
- (e) the TSSPDCL is directed to adjust the amount collected by it towards minimum charges, both on maximum demand of energy for the closure period by making appropriate calculation;
- (f) liberty is given to the respective petitioners to make a representation along with calculation statement to the respondents' authorities including TSSPDCL to enable them to adjust the same;

85. Accordingly, all the Writ Petitions are allowed to the extent indicated in the above. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

K. LAKSHMAN, J

18th January, 2021

Note: L.R. Copy to be marked: **Yes**
(B/O.)
Mgr