IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4345 of 2023 a/w CWP Nos. 1571 of 2022, 2503 of 2022, 3972 of 2023, 9497 of 2023, 9498 of 2023 and CWP No.2487 of 2024.
Reserved on: 21.11.2024
Date of Decision: 23.12.2024

1. **CWP No.4345 of 2023**

M/s Vardhman Ispat Udyog .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited ... Respondent

2. **CWP No. 1571 of 2022**

MT Autocraft .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited & others
... Respondents

3. CWP No.2503 of 2022

M/s Vardhman Ispat Udyog .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited ... Respondent

4. CWP No.3972 of 2023

M/s Kundlas Loh Udyog .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited ... Respondent

5. CWP No.9497 of 2023

M/s Fujikawa Power .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited … Respondent

6. CWP No.9498 of 2023

M/s MT Autocraft .....Petitioner

Versus

Himachal Pradesh State Electricity Board Limited … Respondent

7. CWP No.2487 of 2024

M/s Prime Steel Industries Pvt. Ltd.& Anr. .....Petitioners

Versus

Himachal Pradesh State Electricity Board Limited & others … Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner(s): Mr. Shrawan Dogra, Senior Advocate with Mr. Manik Sethi, Advocate.

For the Respondents: Ms. Sunita Sharma, Senior Advocate with Mr. Dhananjay Sharma, Advocate.

Sandeep Sharma, Judge(oral):

Since common questions of facts as well as law are involved in the above captioned cases and similar reliefs have been

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

claimed, all the matters were heard together and are being disposed of vide common judgment.

2. Though, facts in all the petitions are common, as such, same are not required to be specifically referred from one particular petition, but since, certain documents, pursuant to which demand notices came to be issued by the respondent-Board, are required to be taken note, this court for the sake of clarity, shall take note of pleadings as well as documents, adduced on record in the lead case i.e. **M/s Vardhman Ispat Udyog vs. Himachal Pradesh State Electricity Board Limited** (CWP No. 4345 of 2023).

3. Petitioners herein, in all the petitions, are aggrieved on account of inaction of the respondent-Board, which while raising demand of additional security, has also proceeded to reject the request made by the petitioners herein for installation of pre-paid meter in terms of Section 47(5) of the Electricity Act, 2003 ***(for short 'Act'),*** as a result thereof, petitioners herein, besides bearing burden of additional security payable under Section 47(1) of the Act are also losing out on the benefit of 3% rebate with interest from the date of preparedness for installation of prepaid meter i.e. from 16.04.2021 as per tariffs notified by the respondent-HPERC for the financial year 2022-23 and 2023-24.

4. Precisely, the facts of the case as emerge from the pleadings adduced on record by the respective parties are that petitioners herein, which fall under the category of Large Scale Industry are involved in industrial production in the State of Himachal Pradesh. Petitioners are consumers of electricity and as such, they fall under the definition of 'consumer' as per Section 2(15) of the Act. Since respondent-Board is authorized to operate and maintain a distribution system for supplying electricity to the consumers in its area of supply, it is a 'distribution licensee' in terms of Section 2(17) of the Act qua the petitioners. On account of consumption of energy for industrial production, petitioners herein are provided post paid meters for measurement of consumption of energy by the petitioners, but they are required to deposit Advance Consumption Deposit (**for short 'ACD')** in terms of Section 47 of the Act and Regulation 3 of HPERC (Security Deposit)(Fourth Amendment) Regulations 2021, which provides that distribution licensee is empowered to require reasonable security from the consumer, who requires electricity supply. Reasonable security is to be determined by regulations framed under the Act. Section 47(2) of the Act further provides that in the event of failure on the part of the consumer to deposit the security as per Section 47(1) of 2003 Act, the licensee may, by notice, require that person, within thirty days to give reasonable security for the payment

of all monies. Section 47(3) of the Act provides that in case, consumer fails to give such security deposit despite being served demand notice under Section 47(2) of the Act, the licensee may discontinue the supply of electricity for the period during which the failure continues. Section 47(5) of the Act provides that if a person is prepared to take supply through a pre-payment meter, distribution licensee will not be entitled to require security in terms of Section 47(1) of the Act.

5. Respondent-Himachal Pradesh Electricity Regulatory Commission ***(for short 'HPERC'***) vide Notification No. HPERC/414, dated 03.03.2005 notified the regulations called Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 in exercise of powers conferred by clause (v) and (w) of Sub-section (2) of Section 181 r/w Section 47 of the Act. Regulation 3 requires every person, who wants supply of electricity to his premises to give security to distribution licensee and as per sub-clause (1) such security should be an amount equivalent to consumption charges for the billing cycle period. However, Regulation 4(3) provides that if any person is prepared to take supply of electricity through a pre-payment meter, distribution licensee shall not be entitled to collect the security deposit **(Annexure P-2).** On 09.07.2021, respondent-HPERC, amended the regulation for the purpose of Section 47 of the Act, to be called Himachal Pradesh Electricity Regulatory Commission (Security

Deposit) (Fourth Amendment) Regulations, 2021, thereby amending certain clauses of 2005 legislation wherein the rates of security were increased for the first time since 2005 **(Annexure P-3).**

6. Afore notification of fourth amendment was laid challenge before this Court by way of CWP 351 of 2022, whereby this Court, in the interim, directed respondent-Board to strictly comply with the provisions of Section 47(5) while raising any demand for security, vide order dated 12.01.2022 **(Annexure P-4).** In pursuance of fourth amendment regulation of 2021, respondent-Board issued a demand notice dated 07.03.2022, as per which respondent-Board raised demand of additional security, which varies in all the cases.

7. In a similar case i.e. CWP 1571 of 2022, this Court vide order dated 22.03.2022 stayed the operation of two demand notices dated 04.02.2022 and 05.02.2022 **(Annexure P-6)**. In the meantime, Tariff Order for financial year 2022-23, dated 29.03.2022 and financial year 2023-24, dated 31.03.2023 came into existence, whereby 3% rebate on energy chargers was proposed to be given to the Large Scale Industries having pre-paid connection. In response to aforesaid demand letter dated 07.03.2022, petitioner-industry wrote communication dated 16.04.2022 to respondent-Board, requesting therein to withdraw the demand notice and refund the existing security already deposited with the respondent-Board and provide pre-paid

meter in terms of Section 47(5) of the Act. Petitioner specifically stated in the aforesaid communication that provisions under Section 45(7) of Act bars recovery of security from the persons requiring supply through a pre-paid meter ***(Annexure P-7).*** Despite there being aforesaid communications sent by the petitioners, no steps were ever taken by the respondent-Board, rather again demand notice, thereby asking petitioners to give additional security was issued and as such one of the petitioner filed petition bearing CWP 2503 of 2022 before this Court, which is part of the instant proceedings, wherein this Court vide order dated 26.04.2022, stayed the operation of demand notice, but directed the petitioner to deposit regular electricity bills from time to time, subject to final outcome of afore petition (Annexure P-8).

8. Vide communications dated 06.05.2023 and 18.05.2023 petitioners herein while again requesting the respondent-Board to dispense with advance security by installation of prepaid meter (Annexure P-4 and P-5) also claimed that it is losing out on the incentive of 3% rebate on the energy chargers, as notified by the HPERC for the financial years 2022-23 and 2023-24, due to the inaction of respondent-Board and as such, needful may be done at the earliest. However, respondent-Board vide communication dated 26.05.2023 informed the petitioner that it cannot accede to the request of industry as industry has filed a writ petition bearing CWP

No.2503 of 2022, laying therein challenge to Security Deposit (fourth amendment) Regulation, 2021, which is subjudice before the this Court. In the aforesaid background, petitioner-industry has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India seeking quashment of demand notices of additional security with further directions to respondent-Board to install pre-paid meter in terms of Section 47(5) of the Act and grant 3% rebate as per tariff order FY 2022-23 & FY 2023-24 with interest from the date of preparedness for installation of prepaid meter.

9. Pursuant to the notices issued in the instant proceedings, respondent-Board has filed the reply, wherein facts as have been noticed hereinabove are not in dispute, rather attempt has been made to refute the claim of the petitioner on the ground that provision contained under Section 47(5) of the Act are not applicable to the petitioner-Industry. At this stage, it would be profitable to reproduce para-8 of the reply filed by the respondent-Board herein-below:-

> “i) That Bureau of Indian Standard has prescribed Indian Standard for "Alternating Current Direct Connected Static Prepayment Meters for Active Energy (Class I and Class) specifications under - IS 15884 where in following terms have been defined :-
>
> Payment meter: Electricity meter with additional functionality that can be operated and controlled to allow the flow of energy according to agreed payment mode.

Prepayment method: Payment mode in which automatic interruption occurs when available credit is exhausted.

ii) That the pre-requisite for a prepayment meter is to disconnect the electricity supply when the prepaid amount is exhausted. That for this functionality, the prepayment meters are provided with inbuilt load break switch. The limit of line to line voltage for this operation is 600 voltage (line to line in case of polyphase systems) and current is 50 Amp.

iii) That the petitioner industrial connection is for voltage and current above that specified for prepayment mode (11 kV, 33 kV, 66 kV, 132 kV & 220 kV) and **the meter is not directly connected to the AC Voltage rather connected through static transformer (CT/ PT) and therefore, it is technically not feasible to install prepaid meter in favour of the petitioner industrial consumer(s).** Hence the instant petition deserve dismissal with exemplary cost since already a similar petition has filled by the petitioner on similar basis facts which is already pending adjudication before this Hon'ble Court and as of now that petition has been tagged with some other similar petition wherein the vires of HPREC (Security Deposit)Regulations 2021 (Forth Amendment") has been challenged Despite having this fact the petitioner is time and again approaching the replying Respondents/HPSEBL with a request of prepaid meter just to evade itself from security to be deposited as per HPERC (Security Deposit) Regulation 2021 ("forth Amendment")

iv) That as per Central Electricity Authority (Installation and Operation of Meters) (Amendment) Regulations, 2019, the timeframe for replacement of existing meters with smart meters with prepayment feature shall be notified by Central Government. Ministry of Power vide notification dated 17.08.2021 has notified the following timelines for the

replacement of existing meters with smart meters with prepayment feature:-

All consumers (other than agricultural consumers) in areas with communication network, shall be supplied electricity with Smart Meters working in prepayment mode, conforming to relevant IS, within the timelines specified below:

(i) All Union Territories, electrical divisions having more than 50% consumers in urban areas with AT&C losses more than 15% in financial year 2019-20, other electrical divisions with A7'&C losses more than 25% in financial year 2019-20, all Government offices at Block level and above, and all industrial and commercial consumers, shall be metered with smart meters with prepayment mode by December, 2023:

Provided that the State Regulatory Commission may, by notification, extend the said period of implementation, giving reasons to do so, only twice but not more than six months at a time, for a class or classes of consumers or for such areas as may be specified in that notification;

(ii) All other areas shall be metered with smart meters with prepayment mode by March, 2025:

Provided that in areas which do not have communication network, installation of prepayment meters, conforming to relevant IS, may be allowed by the respective State Electricity Regulatory Commission:

(iii) All consumer connections having current carrying capacity beyond that specified in relevant IS, may be provided with meters with smart meters having AMR facility.

Copy of the notification dated.....is appended hereto as Annexure R1/A for the kind perusal of this Hon'ble Court.

In this context, it is respectful submission of the replying respondent that the petitioner's industrial connection is

> covered under Sr. No. (iii) above for which meters with smart meter having AMR facility is to be provided and there is no mention of prepayment facility since it is not technically feasible to go for the prepayment mode for such high voltage connections. The petitioner is thus trying to mislead this Hon'ble Court and trying to escape from payment of security as per the regulations notified by HPERC and therefore the petition is liable for dismissal with heavy costs."

10. Besides above, prayer has been made to dismiss the petition on the ground that the petitioner has an alternate remedy to approach the Consumer Grievances Redressal Forum, established under the regulations No.16, 17, and 18 framed by the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal and Ombudsman Regulations, 2013).

11. Mr. Shrawan Dogra, learned Senior Counsel duly assisted by Mr. Manik Sethi, Advocate representing the petitioner(s), in all the petitions, vehemently argued that the respondent-Board is not acceding to the request of installation of prepaid meters on the ground that since petitioner-industry has already initiated legal proceedings, laying therein challenge to Security Deposit(Fourth Amendment) Regulation. 2021 against the Board, but such plea of the respondent-Board is totally misconceived because afore writ petition was only filed against the demand notices issued under the Fourth Amendment Regulation of 2021 (Annexure P-13). Mr. Dogra, further argued that the respondent-Board is statutorily bound to implement

the mandate of Section 47(5) of the Electricity Act and Regulation 4(2), which gives a right to the consumer to opt for a pre-paid meter. He further submitted that afore provisions also bar the respondent-Board to demand security in case the consumer is prepared to take the electricity supply through a pre-paid meter. Mr. Dogra vehemently argued that respondent-Board has erred in not appreciating the communication sent by of petitioner-industry dated 16.04.2022 (Annexure P-7), wherein the petitioner-industry has shown its 'preparedness' for the installation of pre-paid meter as it is statutory duty of the Board to provide pre-paid meters upon the 'preparedness' shown by the petitioner-industry. He substantiated his arguments by referring to Section 47(5), as per which distribution licensee (HPSEBL) shall not be entitled to require security, if person requiring the supply is prepared to take the supply through a pre-paid meter. He further argued that Section 181 of the Act provides for State Commissions to make regulations consistent with the Act, perusal whereof nowhere permits regulations to be made for matters under Section 47(5) of the Act. Mr. Dogra, contended that despite there being specific direction issued by this Court vide order dated 12.01.20222 passed in CWP No.351 of 2022 (Annexure P-4) to the respondent-Board to comply with the provisions of Section 47(5) of the Act, before raising any additional demand for security, the

respondent-Board issued a demand notice (Annexure P-5) for depositing the additional security in terms of Fourth Amendment Regulation, which is in violation of the afore order. Mr. Dogra further argued that since respondent-Board is not acceding to the request for installation of pre-paid meter, petitioner-industry is continuously suffering loss on account of inaction of the Board, as petitioner-industry is not being granted 3% rebate on electricity chargers (on monthly basis) as provided in the tariff order passed by Commission for the FY 2022-23 and FY 2023-24.

12. Ms. Sunita Sharma, learned Senior Counsel duly assisted by Mr. Dhananjay Sharma, Advocate, representing the respondent-Board, contended that after the notification of Fourth Amendment Regulation 2021, rates for initial security deposit has been changed for the first time after 2005 and as such, petitioner-industry is liable to pay additional security as per HPERC regulation. She submitted that since as per calculation of average of monthly energy bill, the bill comes to the tune of Rs 3,66,00,547/- for previous FY 2021-22 and industry's initial security stands as Rs 1,39,50,000/- in shape of cash and 15,50,000/- in shape of bank guarantee, hence it is short of Rs 2,11,00,547/- and petitioner-industry is liable to pay the same. She further submitted that petitioner-industry is not paying the security amount for supply of electricity as per Regulations on the pretext that petitioner-Industry is willing to take supply of electricity

through prepaid meter, but said provision of pre-paid meter is not applicable to the petitioner-industry for the reason that pre-payment meters are provided with inbuilt load break switch and the limit of line to lone voltage for this operation is 600 voltage and current is 50 Amp., whereas, petitioner-industry's industrial connection is for voltage and current above specified limit for pre-payment mode (11 kV, 33kV, 66kV, 132kV and 220kV). Ms. Sunita Sharma, further argued that the meter is not directly connected to the AC Voltage, rather it is connected through static transformer (CT/PT) and therefore, it is not technically feasible to install prepaid meter in favour of petitioner-industry. She argued that petitioner-industry is time and again approaching respondent-Board with a request of prepaid meter just to evade itself from security to be deposited as per Fourth Amendment Regulation of 2021. Ms. Sunita, vehemently argued that as per Central Electricity Authority (Installation and Operation of Meters) (Amendment) Regulation 2019, the timeframe for replacement of existing meters with smart meters with prepayment features are notified by the Central Government. She further argued that Ministry of Power vide notification dated 17.08.2021 (Annexure R-1) has notified the timelines for the replacement of existing meters with smart meters having pre-payment feature, wherein petitioner-industry is covered by Regulation 1 (iii), which provides that "all

consumer connections having current carrying capacity beyond that specified in relevant IS, may be provided with meters with smart meters having AMR facility", and as such, there is no mention of pre-payment facility in the said regulation. She further submitted that the petitioner-industry is a large industrial power consumer having CT/PT arrangement, the technology for which related to pre-paid meters is not available in India and as such, it is not technically feasible for the Board to install prepaid meter in favour of petitioner-industry.

13. Lastly, Ms. Sunita, submitted that the present writ petition is not maintainable as the petitioner has an alternate remedy to approach the Consumer Grievances Redressal Forum established under the regulations framed by HPERC by exercising powers under Sections 85 and 86 of the Act instead of approaching this Court against the demand notice. She submitted that the Regulation Nos. 16, 17 and 18 of HPERC (Consumer Redressal and Ombudsman) Regulations, 2013 provides a provision of filling an appeal before CGRF, thus the petitioner has an alternate remedy, this Court may not allow the petitioner to invoke extra ordinary jurisdiction. In this regard, she placed reliance upon the judgment passed by Hon'ble Apex Court in case titled **M/s South Indian Bank Ltd & Ors vs Naveen Mathew Philips & anr.**, SLP (Civil) Nos. 22021-22022 of 2022, wherein it has been held that when

a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by way of writ petition. She further submitted that regulations framed by HPERC are to be implemented in its letter and spirit by respondent-Board being a regulated entity and they are required to follow the Regulations notified by HPERC.

14. I have heard learned counsel for the parties and gone through the record carefully.

15. Precisely, the question, which needs to be determined in the case at hand, is that "whether person, who is prepared to take supply of electricity through pre-paid meter in terms of Section 47(5) of the Act can be compelled to pay security as contemplated under Section 47 of 2003 Act or not?".

16. Before exploring the answer to aforesaid provision of law, it would be apt to take note of Sections 43, 47 and 181 of the Act herein-blow:-

> "43. **Duty to supply on request:-**(1) [1] [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:
> Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:
>
> Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.
>
> [*Explanation*.--For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate

form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

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

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

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section *(1)*, he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

"47Power to require security.__(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him____

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in sub-section *(1)* or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section *(2)* fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section *(1)* and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause *(a)* of sub-section *(1)* if the person requiring the supply is prepared to take the supply through a pre-payment meter."

"181 Powers of State Commissions to make regulations. __(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section *(1)*, such regulations may provide for all or any of the following matters, namely:

(a) period to be specified under the first proviso to section 14;

(b) the form and the manner of application under sub-section *(1)* of section 15;

(c) the manner and particulars of application for licence to be published under sub-section *(2)* of section 15;

(d) the conditions of licence section 16;

(e) the manner and particulars of notice under clause *(a)* of sub-section *(2)* of section 18;

(f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section *(2)* of section 18;

(g) levy and collection of fees and charges from generating companies or licensees under sub-section *(3)* of section 32;

(h) rates, charges and the terms and conditions in respect of intervening transmission facilities under proviso to section 36;

(i) payment of the transmission charges and a surcharge under sub-clause *(ii)* of clause *(d)* of sub-section (2) of section 39;

(j) reduction [1]*** of surcharge and cross subsidies under second proviso to sub-clause *(ii)* of clause *(d)* of sub-section *(2)* of section 39;

(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause *(ii)* of clause *(d)* of sub-section *(2)* of section 39;

(l) payment of the transmission charges and a surcharge under sub-clause *(ii)* of clause *(c)* of section 40;

(m) reduction [1]*** of surcharge and cross subsidies under second proviso to sub-clause *(ii)* of clause *(c)* of section 40;

(n) the manner of payment of surcharge under the fourth proviso to sub-clause *(ii)* of clause *(c)* of section 40;

(o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;

(p) reduction [1]*** of surcharge and cross-subsidies under the third proviso to sub-section *(2)* of section 42;

(q) payment of additional charges on charges of wheeling under sub-section *(4)* of section 42; (r) guidelines under sub-section *(5)* of section 42;

(s) the time and manner for settlement of grievances under sub-section *(7)* of section 42;

(t) the period to be specified by the State Commission for the purposes specified under sub-section *(1)* of section 43;

(u) methods and principles by which charges for electricity shall be fixed under sub-section *(2)* of section 45;

(v) reasonable security payable to the distribution licensee under sub-section *(1)* of section 47;

(w) payment of interest on security under sub-section *(4)* of section 47;

(x) electricity supply code under section 50;

(y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51;(z) duties of electricity trader under sub-section *(2)* of section 52;

(za) standards of performance of a licensee or a class of licensees under sub-section *(1)* of section 57;

(zb) the period within which information to be furnished by the licensee under sub-section *(1)* of section 59;

[2][(zc) the manner of reduction of cross-subsidies under clause *(g)* of section 61;]

(zd) the terms and conditions for the determination of tariff under section 61;

(ze) details to be furnished by licensee or generating company under sub-section *(2)* of section 62;

(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section *(5)* of section 62;

(zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section *(1)* of section 64;

(zh) issue of tariff order with modifications or conditions under sub-section *(3)* of section 64;

(zi) the manner by which development of market in power including trading specified under section 66;

(zj) the powers and duties of the Secretary of the State Commission under sub-section *(1)* of section 91;

(zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section *(2)* of section 91;

(zl) rules of procedure for transaction of business under sub-section *(1)* of section 92;

(zm) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section *(8)* of section 128;

(zn) the manner of service and publication of notice under section 130;

(zo) the form of preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section *(1)* of section 127;

(zp) any other matter which is to be, or may be, specified.

(3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication."

17. Careful perusal of Section 47 of the Act provides that if a person requires the supply of electricity, in pursuance of Section 43 of the Act, he is subjected to reasonable security as may be determined by regulations. Similarly, Section 43 of 2003 Act provides statutory duty of distribution licensee to give supply of electricity as provided under the Act. Section 181 of the Act empowers the State Commission to make regulations by notification consistent with the Act. Most importantly, Section 181(2)(v) of the Act provides that such regulation may provide provision of security payable to the distribution licensee under sub-section (1) of section 47 of the Act. In terms of aforesaid provision of law, respondent-HPERC provides for security under Regulations 3 & 4, which are reproduced herein below:-

"**HPERC Regulation dated March, 2005**

3. Power to require security.- (1) The distribution licensee shall require every person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to give security as provided in regulation 4, for the payment of all monies, which may become due to the licensee –

(a) (a) in respect of the electricity supplied to such person; or/and

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line, plant and/or meter.

(2) If such person fails to give such security under sub-regulation (1), the distribution licensee may refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

4**. Security deposit for the supply of electricity**: - (1) The consumer shall, at all times maintain with the licensee an amount equivalent to consumption charges for the billing cycle period, as security during the period the agreement for supply of energy to such consumer remains in force:

Provided that where billing cycle is changed the security deposit shall be reduced/increased on pro-rata basis.

(2) If any person is prepared to take the supply through a pre-payment meter, the distribution licensee shall not be entitled to collect the security deposit in respect of the electricity supplied to such person:

Provided that in the case of existing consumer who opts for the supply through the pre-payment meter, the licensee shall refund the amount of the security deposit of such consumer lying with the licensee.

(3) The initial security deposit payable at the time of releasing the supply shall be at flat rates mentioned in regulation 5.

(4) The amount payable towards security shall be in the form of cash/demand draft (DD) drawn in favour of the licensee;

Provided that where the amount payable towards security exceeds rupees 5.00 lacs, the consumer may opt to furnish the security in the form of Bank Guarantee.

"**HPERC (Fourth Amendment) Regulation dated 9th July, 2021**

2. Amendment of regulation 3.-

In proviso to sub-regulation (1) of regulation 3, for the words "required for its own use", the words "required by it for its own use" shall be substituted.

3. Amendment of regulation 4.-

In regulation 4 of the said regulations –

(i) in sub-regulation(1), for the words “at the rates worked out” shall be omitted ;

(ii) in sub-regulation (2) –

(a) for the word “is prepared to take”, the word “takes” shall be substituted; and

(b) in the existing proviso, for the words “such consumer lying with the licensee”, the words and figure “such consumer lying with the licensee, after making adjustments for the amounts outstanding from the consumer to the licensee, within the timelines given in regulation 8, starting from the date of replacement of postpaid meter with prepaid meter” shall be substituted.

(iii) in sub-regulation(3), for the words, figures and sign “the amount equivalent to the average bill (excluding arrears but including late payment surcharge, if any) for (n+1.35) months based on the bills raised in relation to the period of twelve billing months (April to March) of the immediately preceding year”, the words, figures and sign “the amount equivalent to the average monthly bill (net of arrears and subsidy, if any) for (n+1.0) months based on the bills raised in relation to the twelve billing months immediately preceding the date of such demand ” shall be substituted;

(iv) in sub-regulation (4), for the words, figure and sign “in the form of cash/demand Draft (DD) drawn in favour of the licensee” , the words and sign “paid in the form of cash/demand Draft (DD) drawn in favour of the licensee or through electronic mode” shall be substituted ;

(v) in sub-regulation (5), for the words, figure and sign “in the form of cash/demand Draft (DD) drawn in favour of the licensee” , the words and sign “paid in the form of cash/demand Draft (DD) drawn in favour of the licensee or through electronic mode” shall be substituted;

(vi) in item (b) of sub-regulation (6), for the words, figure and sign “in shape of cash/demand draft”, the words and sign “in

> the form of cash/demand draft or through electronic mode" shall be substituted; and
>
> (vii) in sub-regulation (7), for the words and sign "in shape of cash/demand draft etc.", the words and sign "in the form of cash/demand draft or through electronic mode" shall be substituted."

18. In terms of aforesaid regulation demand for additional security has been raised by the respondent-Board, but bare perusal of Section 47 of the Act makes it abundantly clear that provision contained under Section 47 of the Act, is subject to other provisions contained in said section including Section 47(5) of the Act.

19. As per un-amended regulation if any person is prepared to take the supply through pre-paid meter, the distribution licensee shall not be entitled to collect the security deposit in respect of the electricity supplied to such person. Aforesaid regulation 4(2) came to be amended, as detailed hereinabove, wherein words, "is prepared to take" came to be substituted with word "takes". Learned Senior counsel representing the respondent-Board, while referring to amended regulation 4(2), vehemently argued that till the time consumer takes the supply through pre-paid meter, distribution licensee shall be entitled to collect the security deposit in respect of the electricity supplied to such person. She further submitted that since the word "takes" has been substituted with the word "is prepared to take", plea of the petitioners that they were prepared to take the pre-paid meter is outside the purview of Forth Amendment

Regulation 2021. No doubt, amended regulation, as detailed hereinabove, provides that if the person “takes” the supply through a pre-payment meter, then only he/she will not be required to pay security deposit in respect of the electricity supply to distribution licensee in terms of section 47(1) of the Act, but there appears to be merit in the contention of learned Senior counsel representing the petitioner that though by way of amendment expression ‘prepared to take’ has been substituted with the words ‘takes’, but same shall have no consequence, inasmuch as power of the respondent-Board to call for security under Section 47, because Section 47(5) itself provides that distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub section 1 of the Act, if person requiring supply of electrify is prepared to take the supply through pre-payment meter. Once parent Act itself imposes a duty on the distribution licensee not to demand security under Section 47(1) from a person who is willing to take the supply through a pre-paid meter, such statutory right cannot be overridden under the guise of Regulations framed under Section 181 of the Act.

20. Though, this Court is of the definite view that right, if any, granted under the Parent Act cannot be taken away by the regulation framed under the Act, but even otherwise, this Court having perused Section 181 of the Act, as reproduced hereinabove, is of the view that

HPERC has no power to frame the regulation with regard to provision contained under Section 47(5) of the Act, which makes it mandatory for distribution licensee to provide pre-paid meter to a person prepared to take it. If Section 181 of the Act is read in its entirety, it clearly provides for areas, wherein HPERC can proceed to frame regulations.

21. Though, Ms. Sunita Sharma, learned Senior counsel representing the respondent-Board, while referring to Section 181(2)(v)&(w), attempted to argue that HPERC can frame regulation with regard to reasonable security deposit payable to the distribution licensee under sub section (1) of Section 47 of the Act as well as payment of interest on security under sub-section (4) of Section 47 of the Act, but she was unable to dispute that afore section nowhere empowers the Commission to frame regulation, if any, with regard to pre-paid meter in terms of Section 47(5) of the Act.

22. Despite having conceded that provision of Section 47(5) is mandatory, reliance placed by the respondents upon the amended Regulation 4 is wholly misplaced. Once there is specific provision under the Act to provide pre-paid meter and pursuant to such provision, petitioners herein being consumers, may become entitled to some benefit, rightful claim of the petitioners cannot be permitted to be defeated on the ground that respondent-Board is not yet ready to

provide pre-paid meter in terms of Section 47 of the Act. For the sake of repetition, it is again reiterated that Section 47(1) of the Act is subject to the provisions contained under Section 47(5) and not vice versa and secondly power to make regulation vested in the State Commission is governed by the provision contained under Section 181 of the Act. Though, the Commission is provided with an authority to make regulation for reasonable security payable to the distribution licensee under Section 47(1) of the Act, but as has been observed hereinabove, Commission could not have formulated regulation qua provision of installation of pre-paid meter in terms of Section 47(5) of the Act. Section 181(2)(w)of the Act, provides for regulation qua payment of interest on security under Section 47(4) of the Act, but certainly there is no power vested in the State Commission to formulate any regulation in respect of provision contained under Section 47(5) of the Act. Since provision contained under Section 47(1)of the Act is subject to that of Section 47(5) of the Act, regulations framed under Section 181 for the purpose of Section 47(1) of the Act can have no effect over Section 47(5) of the Act. Reliance in this regard is placed upon the judgment passed by Hon'ble High Court of Karnataka in case tilted **Universal Air Products Private Limited vs. Bangalore Electricity Supply Company Limited** in Writ Appeal No.6342 of 2017, wherein it has been held as under:-

> "3. Learned Counsel for the appellant draws the attention of this Court to a judgment dated 24.07.2018 in W.A.Nos.6090-91/2017 in the case of Bangalore Electricity Supply Company Limited and Another Vs. M/s.Vijaya Steels and Others, where a co-ordinate Bench of this Court upheld the decision of the learned Single Judge in W.P.No.13836/2015 noticing that in view of Sub- section (5) of Section 47 of the Electricity Act, 2003, if the person requiring the supply is prepared to take the supply through a pre-paid meter, he shall not be liable to furnish security as contemplated under Clause (a) of Sub-section (1) of Section 47. It was noticed that if the consumer is prepared to take the supply through a pre-paid meter, and as Prepayment meter was presently not available, it was held that respondent-BESCOM should supply electricity to the consumer by collecting approximate monthly energy charges in advance without insisting for any security as contemplated under Clause (a) of sub-section (1) of Section 47 of Electricity Act, 2003. It was also directed by the learned Single Judge that the amount of the petitioner lying in deposit with the respondent-BESCOM shall be adjusted towards energy charges. When the respondent-BESCOM took up the matter in appeal, the co-ordinate Bench in W.A.Nos.6090-91/2017 noticed that the submissions of the respondent-BESCOM that no prepayment meters for High Tension Consumers (HT-IIA) was available and proceeded to uphold the decision of the learned Single Judge in W.P.No.13836/2015. Further by order dated 16.12.2019 in Review Petition No.53/2019 in the case of M/s. Bangalore Electricity Supply Company Limited and Another Vs. M/s. Vijayaa Steels and Others, this Court dismissed the review petition preferred by the respondent-BESCOM.
>
> 4. In that view of the matter, this issue stands covered by a decision of the co-ordinate Bench in W.A.Nos.6090-91/2017 dated 24.07.2018. Therefore, this appeal is allowed. The impugned order dated 10.10.2017 passed by the learned Single Judge in W.P.No.30906/2014 is set aside."

23. Reliance is also placed upon the judgment passed by Hon'ble High Court of Orissa in case titled as **Maruti Steel Moulding Private Limited vs. O.E.R.C. and others, 2015 SCC OnLine Ori. 514,** wherein it has been held as under:-

> **"19.** The cumulative effect of the provisions discussed above makes it clear that if a consumer expresses his willingness to avail the power supply through prepayment meter, the supplier is obliged under law to provide the same as it is otherwise beneficial for the consumer. Though the Act does not define "prepayment meter" both the Code, 2004 and Regulation 2006 define a prepaid meter as a meter which facilitates use of power only after advance payment. Both the Code, 2004 and Regulation, 2006 have been framed in exercise of powers conferred under the Code and Regulation making provisions of the Acts.

But the opposite party-supplier instead of installing the prepayment meter by providing the same has been insisting upon for payment of additional security by issuing impugned Annexures. Under compelling circumstances to retain the power supply to the premises, the petitioner has been depositing the same as and when the demand was made by the authority. But every time plea has been taken by the opposite party-supplier that instead of best efforts, they are not able to get prepayment meter for the consumers of electricity but that itself is not a ground to exonerate the supplier to supply the prepayment meter, when the provisions of the Act, 2003, Code, 2004 and Regulation, 2006 are clear and specific and there is no ambiguity in the provision itself, the opposite party-supplier is obliged under law to provide prepayment meter.

20. In ***Vijayaa Steel Limited*** **(supra), the Karnatak** High Court has considered the same question and paragraph-5 states as follows:

> "5. In view of sub-section (5) referred to above, if the person requiring the supply is prepared to take the supply through a pre-payment meter, he shall not be liable to furnish security as contemplated under clause (a) of sub section (1) referred to above. In this case, as the petitioner is prepared to take the supply through a pre-payment meter, and as pre-payment meter is presently not available, it is appropriate that respondent Nos. 1&2 shall supply electricity to the petitioner by collecting approximate monthly energy charges in advance without insisting for any security as contemplated under clause (a) of sub-section (1) W.P. No. 13836/2015 referred to above. The amount of the petitioner lying in deposit with respondent Nos. 1&2 shall be adjusted towards energy charges. This order shall cease to be in force once respondent Nos. 1&2 provide a pre-payment meter to the petitioner. The writ petition is disposed of in the above terms."

21. The same question has also been considered by the Jharkhand High Court in *T&T Metals Pvt. Ltd.* (supra), wherein paragraphs-8, 9, 10 and 11 read as follows:

> "8. From perusal of the aforesaid provisions, it is clear that if a consumer prepare to take supply of electricity through prepayment meter, then the licensee have no other option than to supply the electricity to the consumer through prepayment meter. It is also clear that in that event the licensee is not entitled to demand security deposit as provided under Section 47(1) of the Electricity Act. Admittedly the petitioner vide annexure-2 had shown his desire to take supply of electricity through prepayment meter. From the various counter affidavits filed by the respondent, it is clear that the respondent is denying the claim of the petitioner, merely on the ground that it has not yet made arrangement to supply the electricity through prepayment

meter. The aforesaid excuse of the respondent appears to be against the law.

9. The respondent being a 'State' within the meaning of Article 12 of the Constitution is duty bound to follow the law if it wants to do business of supply of electricity. It is not open to the respondent to take a plea that it will not follow the law because it had not made arrangement for the same. Therefore, on the basis of the above excuse, the prayer made by the petitioner cannot be denied.

10. The second excuse given by the respondents in its counter affidavit before the Forum that the meter is not available in the market, is also not correct. According to the petitioner, such meters are available in the market. Even the respondent had stated in the counter affidavit filed before the forum that the consumer may be directed to make available the prepayment meter to the respondents so that the Board may install it after making proper testing. This shows that such meters are available in the market. It is worth mentioning that Section 55(1) and Clause 13.2.1 of the Electricity Supply Code Regulations, 2005 cast a duty upon the respondent to install the said meter for supply of the electricity. Under the aforesaid circumstances, the respondent, being a licensee for the supply of electricity, is duty bound to provide prepayment meter in the premises of the petitioner and make electricity supply in accordance with law.

11. In view of the discussions made above, I allow this application and I hereby quash the impugned orders passed by the Electricity Ombudsman, Jharkhand. I also quash the demand made by the respondent from the petitioner to deposit revised security money for the financial years 2010-11 and 2012-13. I further direct the respondents to make arrangement for supply of electricity to the premises of the petitioner by installing prepayment meter as per Section 47(5) of the Act and second proviso to Clause 10.1 of the Electricity Supply Code Regulations, 2005. I further restrain the respondents from demanding security money from the petitioner as per Section 47(1) of the Act. However, I direct the petitioner to make payment of the current bill regularly."

23. Therefore, taking into consideration the above facts and circumstances and also the provisions of law governing the field, it is made clear that there is no ambiguity in the provisions of law governing the field."

24. Reliance is also placed upon the judgment dated 17.03.2023 passed by Hon'ble Punjab and Haryana High Court in case tilted **M/s Dasmesh Alloys vs. Punjab State Power Corporation Limited and**

others alongwith connected matters, in CWP No.22544 of 2018. Relevance para No.14 of the afore judgment is reproduced herein below:-

> "14. In the considered opinion of this Court, the arguments raised at the hands of the respondents-Corporation is misplaced. For the sake of repetition it must be reminded that Section 47(1) of the 2003 Act is subject to the provision contained in Section 47 (5) and not vice versa and secondly power to make regulation vested in the State Commission is governed by the provisions contained in Section 181 of the 2003 Act. The Commission is provided with an authority to make regulation for reasonable security payable to a distribution licensee under Sub Section 1 of Section 47. Further Section 181(2) (w) of the 2003 Act provides for regulation qua payment of interest on security under sub- section (4) of Section 47 of the 2003 Act. There is no power vested in the State Commission to formulate any regulation with respect to provision contained in Section 47 (5) of the 2003 Act. Since provision contained in Section 47 (1) of the 2003 Act is subject to that of Section 47 (5) of the 2003 Act, regulations framed for the purpose of Section 47(1) of the 2003 Act can have no effect over Section 47(5) of the 2003 Act."

25. From the bare perusal of aforesaid exposition of law laid down by the various High Courts, this Court finds that Section 47(5) of the Act is mandatory and shall preside over Section 47(1) of the Act, meaning thereby, if a consumer expresses his preparedness to avail supply of electricity through a pre-paid meter, distribution licensee/supplier is under the obligation to provide the same. Respondent-Board being 'State' within the meaning of Article 12 of the Constitution of India is duty bound to follow the law and as such, respondent-Board was duty bound to consider the request of the petitioners for installation of pre-paid meter.

26. Before issuing necessary direction in light of discussion made hereinabove, this Court wishes to answer the question of maintainability raised by the learned Senior counsel representing the respondent-Board. Even though there is availability of alternative remedy, but that ipso facto will not disentitle the petitioners to invoke the jurisdiction under Article 226 of the Constitution of India when there is clear violation of

fundamental rights and provisions of statute, as has been held in ***Maruti Steel Moulding Private Limited*** case (supra). Besides laying challenge to demand notice, petitioners have further laid challenge to inaction of respondent-Board in providing pre-paid meters within reasonable time because of which they are losing out on the incentive of 3% rebate, such violation can be redressed in present writ petition filed under Article 226 of the Constitution of India.

27. Though, this Court understands the practical/ infrastructural difficulties faced by the respondent-Board in providing the pre-paid meter to the petitioners, but that cannot be a ground to defeat the rightful claim of the petitioners on this sole ground, rather best efforts should be made by the respondent-Board to make the arrangement for supply of electricity to the petitioners by installing pre-paid meter as per the provision contained under Section 47(5) of the Act. Moreover, Section 42 of the Act casts duty upon the distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in its area for supply of electricity in accordance with the provision contained under the Act. However, in peculiar facts and circumstances where on account of practical difficulties, as pointed out in the reply, respondent-Board is finding it difficult to provide pre-paid meters in terms of Section 47(5), this Court finds that rights of the petitioners as borne out from Section

47(5) of the Act and practical difficulty being faced by the respondent-Board need to be equitably balanced.

28. Consequently, in view of detailed discussion as well as law taken into consideration, this Court finds merit in the present petitions and accordingly same are allowed and demand notices in all the petitions are quashed and set-aside. Further, in order to balance the equities, the respondent-Board is directed to make arrangement for supply of electricity to the premises of the petitioners by installing pre-paid meters as per the provision contained under Section 47(5) of the Act. It is further directed that the respondent-Board shall grant incentive of 3% rebate to the petitioners from the date of preparedness of the petitioners to take prepayment meter in terms of Section 47(5) of the Act. Needles to say, petitioners are directed to pay monthly energy charges in advance and amount, if any, of the petitioners lying as security with the respondent-Board, shall be adjusted towards energy charges. However, it is made clear that this arrangement shall continue till respondent-Board is equipped for providing prepaid meter to the petitioners**.** All pending applications stand disposed of, in all the petitions. Interim directions, in all the cases stand vacated**.**

(Sandeep Sharma),
Judge

December 23, 2024
(shankar)