

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 694 of 2026
Bharat Hi-Tech (Cement) Private Limited
-vs-
Damodar Valley Corporation

For the Petitioner	: Mr. Kishore Dutta, Sr. Adv. Mr. Aniruddha Chatterjee, Sr. Adv. Mr. Nilay Sengupta, Adv. Mr. Ankit Agarwal, Adv. Mr. Sujit Banerjee, Adv. Mr. Pallav Chowdhury, Adv.
For the Opposite Party	: Mr. S.N. Mookherjee, Sr. Adv. Mr. Sabyasachi Chowdhury, Sr. Adv. Mr. Rajarshi Dutta, Adv. Mr. Subhrojyoti Mookherjee, Adv. Mr. Soorjya Ganguli, Adv. Mr. Somdutta Bhattacharya, Adv. Mr. Aritra Deb, Adv. Ms. Arti Bhattacharya, Adv.
Hearing Concluded on	: 10.03.2026
Order on	: 30.03.2026

OM NARAYAN RAI, J.:-

1. This revisional application under Article 227 of the Constitution of India is directed against an order dated February 19, 2026 passed by the State Consumer Disputes Redressal Commission, West Bengal (hereafter “the State Commission”) whereby an order dated September 03, 2024 passed by the District Consumer Disputes Redressal Commission, Purulia (hereafter

“the District Commission”) thereby restraining the opposite party from disconnecting the petitioner’s electricity supply has been vacated.

FACTS OF THE CASE:

2. Briefly summed up the relevant facts, as may be gathered from the material on record, are as follows:-
 - a. A complaint under Section 12 of the Consumer Protection Act, 1986 (hereafter “the 1986 Act”) had been filed by the petitioner before the District Commission alleging deficiency in service by the opposite party herein. The complaint was registered as C.D.F. Case No. 35 of 2009.
 - b. Initially, the opposite party filed an application challenging the maintainability of the complaint before the District Commission asserting that the petitioner was not a consumer in terms of the relevant provisions of the 1986 Act. The application of the opposite party was allowed by the District Commission by an order dated June 17, 2010.
 - c. The said order was challenged in appeal before the State Commission by the petitioner. Such appeal was allowed by the State Commission by an order dated February 15, 2011 and the matter was remanded to the District Commission for afresh decision on merits.
 - d. The opposite party assailed the appellate order dated February 15, 2011 in revision before the National Consumer Disputes Redressal Commission (hereafter “the National Commission”). However, such revision was ultimately withdrawn on December 04, 2012.
 - e. The District Commission, thereafter, heard the parties and dismissed the petitioner’s complaint once again by an order dated March 04, 2013

thereby observing that the petitioner was not a consumer in terms of the relevant provisions of the 1986 Act.

- f.** The petitioner carried such order in appeal before the State Commission. The State Commission allowed such appeal in part by an order dated September 23, 2021 and remanded the matter to the District Commission for fresh adjudication on merits.
- g.** The opposite party challenged the said order by filing a revisional application before the National Commission. An application for stay of all further proceedings before the District Commission was also filed before the National Commission.
- h.** In the meantime, pursuant to the remand order dated September 23, 2021 passed by the State Commission, the District Commission took up the petitioner's complaint case again and allowed the same by an order dated January 18, 2024.
- i.** Such order dated January 18, 2024 has been challenged by the opposite party by filing an appeal being First Appeal No. 28 of 2024 before the Asansol Circuit Bench of the State Commission. Such appeal is still pending.
- j.** In the said appeal, an application for stay of all further proceedings before the District Commission was also filed. The said Circuit Bench of the State Commission disposed of such application and stayed all further proceedings before the District Commission by an order dated April 26, 2024 till the next date.
- k.** Being aggrieved by such order of stay, passed by the said Circuit Bench of the State Commission the petitioner approached this Court by filing C.O.

2369 of 2024. The said application was entertained by a Co-ordinate Bench of this Court and an interim order staying all further proceedings before the said State Commission for a limited period was passed. Such application is still pending.

- 1.** The petitioner thereafter filed an application for execution of the order dated January 18, 2024 passed by the District Commission which was registered as EA 2 of 2024.
- m.** During pendency of execution case, the opposite party issued a notice dated August 26, 2024 , thereby calling upon the petitioner to pay up the arrears of electricity dues pertaining to the year 2017-18 following a clarification issued by the Appellate Tribunal for Electricity (hereafter “APTEL”) in an appeal against the tariff revision order passed by the West Bengal Electricity Regulatory Commission (Hereafter “WBERC”) whereby the protection of interim order against coercive action granted to consumers other than those who had challenged the tariff revision before APTEL was removed. By the said notice the petitioner was cautioned that the petitioner’s supply would be disconnected if payment as demanded was not made within fifteen days of the notice.
- n.** The petitioner approached the District Commission against such disconnection notice by filing an application in the pending execution case, whereupon, by an order dated September 03, 2024 the District Commission restrained the opposite party from disconnecting the electricity supply of the petitioner on the strength of the said notice dated August 26, 2024 as well as on the strength of any other notice.

- o.** Challenging the said order dated September 03, 2024, the opposite party approached this Court by filing C.O. No. 3323 of 2024. The same was dismissed by this Court by an order dated September 19, 2024 holding that the said application was not maintainable as there was an alternative remedy of appeal available to the petitioner.
- p.** Upon C.O. No. 3323 of 2024 being dismissed, the opposite party filed a revisional application being R.P. No. 18 of 2024 before the Asansol Circuit Bench of the State Commission challenging the said order dated September 03, 2024 passed by the District Commission.
- q.** Such revisional application was admitted by the said Bench of the State Commission on November 06, 2024 and notice was directed to be issued upon the petitioner while fixing the revisional application on December 02, 2024 for service return and appearance.
- r.** Upon getting notice of the revisional proceeding, the petitioner filed an application being I.A. No. 131 of 2024 challenging the maintainability of the revisional proceeding before the said State Commission. While the said revisional application remained pending before the said State Commission, the opposite party approached this Court by filing C.O. No. 1562 of 2025 thereby in effect praying for expeditious disposal of the revision being R.P. 18 of 2024 along with the connected application pending before the Asansol Circuit Bench of the State Commission.
- s.** The said revisional application was taken up by this Court from time to time and was ultimately disposed of by an order dated July 24, 2025 by granting liberty to the petitioner to file an application for transfer of the pending proceedings from Asansol Circuit Bench of the State Commission

to the Principal Bench of the State Commission in physical form since filing of such application for transfer in online mode was becoming difficult due to technical issues.

- t. After the said order was passed, an application being CAN 1 of 2025 was filed seeking recalling of the said order dated July 24, 2025. The said application was disposed of by this Court by an order dated September 09, 2025 thereby transferring the revisional application being R.P. No. 18 of 2024 and the appeal being Appeal No. 28 of 2024 along with all connected applications in both the proceedings from the Asansol Circuit Bench of the State Commission, West Bengal to the Principal Bench of the State Commission, West Bengal. The relevant portion of the said order is as follows:-

“In view thereof, the prayer for transfer is allowed. Let the entire records of the revisional application being R.P. No. 18 of 2024 (Damodar Valley Corporation Vs. Bharat Hi-tech Cement Private Limited) and Appeal No. 28 of 2024 (Damodar Valley Corporation & Ors. Vs. Bharat Hi-tech Cement Private Limited) along with all connected applications in both the proceedings be transferred from the Asansol Circuit Bench of the State Consumer Dispute Redressal Commission, West Bengal to the Principal Bench of the State Consumer Dispute Redressal Commission, West Bengal. The office of the Asansol Circuit Bench of the State Consumer Dispute Redressal Commission is directed to transmit the records of R.P. No. 18 of 2024 and Appeal No. 28 of 2024 along with all connected applications forthwith through Special Messenger and the cost of special messenger shall be put in by the petitioner before the Asansol Circuit Bench within a period of three days from the date of receipt of a server copy of this order. Immediately upon receipt of a server copy of this order and upon deposit of the special messenger cost, the office of the Asansol Circuit Bench of the State Commission shall forthwith transmit the records of the aforesaid proceedings to the Principal Bench of the State Consumer Dispute Redressal Commission, West Bengal. Immediately upon receipt of the records of R.P. No. 18 of 2024 and Appeal No. 28 of 2024 along with all connected applications filed in connection therewith from the Asansol Circuit Bench, the office

of the Principal Bench of the State Consumer Dispute Redressal Commission, West Bengal shall place the records before the Learned President of the West Bengal State Consumer Dispute Redressal Commission forthwith and the Learned President of the State Commission is requested to fix an early date of hearing of R.P. No. 18 of 2024 along with the interlocutory applications and Appeal No. 28 of 2024 along with all connected applications.

Parties will be at liberty to mention this matter before the Learned President of the State Commission with regard to the urgency involved in the matter.

The application being CAN 1 of 2025 stands disposed of with the hope and trust that the President of the State Commission shall dispose of the connected applications as well as the Revision Petition and the Appeal expeditiously.”

- u.** On September 25, 2025 when the revisional application being R.P. No. 18 of 2024 was listed before the Asansol Circuit Bench of the State Commission, then in terms of the aforesaid order dated September 09, 2025 passed by this Court, the said Circuit Bench of the State Commission transmitted the case records pertaining to R.P. No. 18 of 2024 and Appeal No. 28 of 2024 from the said Circuit Bench to the Principal Bench of the State Commission and directed the parties to appear before the Transferee Bench of the State Commission on November 14, 2025.
- v.** The said case i.e. R.P. No. 18 of 2024 was not listed before any of the Benches at the Principal Bench of the State Commission on November 14, 2025.
- w.** In the meantime, on October 17, 2025 the National Commission passed an order of stay of all further proceedings in the execution case pending before the District Commission. Such order was challenged by the petitioner before this Court by filing C.O. No. 3866 of 2025. The said application (C.O. No. 3866 of 2025) was disposed of by this Court by an

order dated November 26, 2025 by *inter alia* setting aside the order dated October 17, 2025 passed by the National Commission.

x. On February 19, 2026 the State Commission took up R.P. No. 18 of 2024 (which was renumbered as R.P. No. 12 of 2026) for hearing and vacated the interim order dated September 03, 2024 whereby the District Commission had restrained the opposite party from disconnecting the electricity supply of the petitioner. Hence the present revisional application.

3. It is recorded that in course of hearing, two compilations – one being compilation of documents running into 296 pages and the other being compilation of bills raised by the opposite party on the petitioner running into 273 pages - were handed up to Court on behalf of the opposite party. The petitioner also produced a bunch of email print outs running into 12 pages in support of its submissions.

SUBMISSIONS ON BEHALF THE PETITIONER:

4. Mr. Dutta, learned Senior Advocate and Mr. Chatterjee, learned Senior Advocate appearing for the petitioner have made the following submissions on behalf of the petitioner:-

a. The order impugned dated February 19, 2026 is wholly without jurisdiction inasmuch as the same has been passed by a forum which did not have the requisite quorum.

b. In terms of Section 16(1B) (i) and (ii) of the 1986 Act, any Bench of the State Commission must comprise at least two members. In the case at

hand, the order impugned has been passed by a single member Bench. The order is therefore hit by *coram non-judice*.

- c. In support of such contention, a judgment of the Hon'ble High Court at Rajasthan in the case of ***Kamal Travels Kokks International vs. The State of Rajasthan & Others***¹ was relied upon. It was demonstrated that the said judgment remained unaltered in appeal before the Hon'ble Division Bench of the said Hon'ble Court and for such purpose the order of the Hon'ble Division Bench in the case of ***State of Rajasthan & Others vs. Kamal Travels Kokks International & Others***² was also cited. It was demonstrated that the aforesaid orders stood affirmed by the Hon'ble Supreme Court in the case of ***State of Rajasthan & Others vs. Kamal Travels Kokks International & Others***³.
- d. It was further submitted that the order impugned was passed without serving any notice on the petitioner.
- e. Attention of this Court was invited to Ground no. (XIII) in CO 1562 of 2025 filed before this Court to demonstrate that the opposite party had itself approached this Court asserting that the State Commission could not hear the matter in the absence of at least two members and that in such context jurisdiction of this Court under Article 227 of the Constitution of India had been invoked by the opposite party in such context.

¹ Civil Writ Petition No. 18 of 2012, decided on March 14, 2018

² Civil Special Appeal (Writ) No. 1779 of 2018, decided on July 04, 2019

³ 2021 SCC OnLine SC 3718

- f.** The orders dated July 24, 2025 and September 09, 2025 passed in C.O. No. 1562 of 2025 evince the consistent case of the opposite party that a single member Bench of the State Commission would be *coram non-judice*.
- g.** The order dated February 19, 2026 has been passed in absolute violation of principles of natural justice.
- h.** The petitioner had furnished a Bank guarantee for a sum in excess of Rs.1.21 crore to the opposite party by way of security deposit for the purpose of the electricity supply. The same has been invoked/encashed by the opposite party after the impugned order was passed.
- i.** The order dated September 09, 2025 clearly directed the learned President of the State Commission to dispose of the revision petition, the appeal as well as the connected applications and that being so, no other member of the State Commission could have unilaterally taken up the matter and passed the order impugned.
- j.** The sudden disconnection of electricity has caused incalculable harm to the petitioner and losses are mounting.
- k.** The order passed by the District Commission was one under Section 72 of the Consumer Protection Act, 2019 (hereafter “the 2019 Act”) and in such view of the matter, the revision petition in which the order impugned had been passed was not maintainable in view of a specific provision for appeal under Section 73 of the 2019 Act. Attention of this Court was invited to the order dated September 19, 2024 passed in C.O. No. 3323 of 2024 where a Co-ordinate Bench of this Court had observed that an order passed under Section 72 of the 2019 Act is appealable under Section 73 thereof.

SUBMISSIONS ON BEHALF THE OPPOSITE PARTY:

5. Mr. Mookherjee, learned Senior Advocate appearing for the opposite party has made the following submissions on behalf of the opposite party:-
- a. In terms of Section 47 of the 2019 Act, the revisional application filed by the opposite party is very well maintainable since the State Commission has the requisite power under Section 47(1)(b) thereof to entertain any challenge to an order if it finds that the District Commission has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction that is vested in it or has in exercising its jurisdiction acted with illegality or material irregularity.
 - b. In terms of Section 29A of the 1986 Act, no proceeding of the District Commission or State Commission or National Commission would be invalid by reason of any defect in the constitution thereof. Similarly, in terms of Section 64 of the 2019 Act proceedings conducted before the Commission cannot be said to be invalid due to defect in its constitution.
 - c. The order dated September 09, 2025 passed by this Court in CAN 1 of 2025 filed in connection with C.O. No. 1562 of 2025 cannot be read to mean that only the President of the State Commission has been directed to decide the revision petition filed by the opposite party. The same must be understood as a direction on the Principal Bench to decide the same, while leaving the President of the Principal Bench free to allocate the matter to any Bench in exercise of the President's administrative power of roster allocation.
 - d. In terms of the provisions of Section 47(2) of the 2019 Act, a Bench may be constituted by the President with one or two members as the President

may deem fit. Thus, the 2019 Act has given liberty to the President to constitute even a single member Bench.

- e.** The complaint filed before the District Commission related to an alleged deficiency in service pertaining to harmonic distortion in electricity supply to the petitioner. Inviting the attention to the prayers in the complaint filed before the District Commission, it was submitted that such complaint was filed in the year 2009 and bills with effect from November 2006 were put to challenge.
- f.** The bills which are raised upon the petitioner after the order dated January 18, 2024 passed by the District Commission pertained to tariff revision for the period 2017-18.
- g.** It was submitted that the tariff revision order passed by the WBERC on May 05, 2022 in respect of the period 2017-18 were challenged by some consumers by way of writ petitions but such challenges failed before the Hon'ble Single Bench and the writ petitions stood dismissed by an order dated February 17, 2023. The disconnection notices issued by the opposite party to its consumers were also challenged by way of writ petitions which were allowed by setting aside the disconnection notices by an order dated March 16, 2023. Two sets of several appeals were then preferred against the said two orders. One set of appeals had been preferred by the consumers (being MAT 395 OF 2023 and other allied appeals) against the order dated February 17, 2023 and the other set of appeals by the opposite party (being MAT 508 OF 2023 and other allied appeals) against the order dated March 16, 2023. In the said appeals the ultimate interim order that is now operating is one whereunder all

consumers who had challenged the tariff revision orders and the disconnection notices have been directed to pay 50% of the arrears based on tariff as determined and to secure the balance 50% by way of Bank Guarantee.

- h.** The tariff revision order passed by WBERC on May 05, 2022 is also challenged before APTEL and in such appeal an interim order was passed on July 01, 2022 thereby injunctioning the opposite party from disconnecting the supplies of all consumers who may be affected by the tariff revision subject to payment of current dues. Such order was however modified later on August 22, 2024 whereby the injunction cover over non-parties was removed. Such order was assailed before the Hon'ble Supreme Court but the challenge failed. The order passed by the APTEL on August 22, 2024 has thus attained finality.
- i.** The petitioner has never challenged the tariff revision and as such it is not entitled to any protection.
- j.** An order adjudicating challenge to bills owing to harmonic distortion of supply could not have been extended to injunct disconnection for non-payment of arrears of electricity dues for the year 2017-18 that had been demanded upon tariff revision orders being passed by WBERC after the injunction order earlier passed by APTEL being modified on August 22, 2024.
- k.** The order dated January 18, 2024 passed by the District Commission awarded a total sum of Rs.49,62,532/- to the petitioner, therefore, disconnection for non-payment by the petitioner of any sum beyond (or in

excess of) the said amount awarded by the District Commission to the petitioner could not have been injuncted.

- 1.** The petitioner enjoyed electricity supply in respect of two Units i.e. Unit-I and Unit-II. Supply to Unit-I was disconnected upon the petitioner's request. Before getting such supply disconnected, the petitioner filed a suit being Title Suit No. 335 of 2021 before the learned Civil Judge (Senior Division), Additional Court, Purulia and got an *ex-parte* ad interim order of injunction restraining the opposite party from disconnecting the electricity supply to the petitioner's premises subject to deposit of the sum of Rs.10 lakh. Such order was extended subsequently by an order dated January 17, 2026.
- m.** In terms of Regulation 4.4.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013, a consumer is duty bound to clear all the outstanding payable by him to the electricity licensee except the last bill for supply till the date of disconnection before making a request for disconnection. Despite such provision, the petitioner has not paid the outstanding dues in respect of Unit-I that got disconnected at the request of the petitioner on September 30, 2025.
- n.** A sum of Rs.12,12,81,320/- is due and owing from the petitioner in respect of Unit-I and a sum of Rs.1,96,13,365/- is due and owing from the petitioner in respect of Unit-II.
- o.** The opposite party tried to correct the harmonic supply but the petitioner resisted the corrective course. In support of such submission an email dated August 08, 2025 (at page 271 to 275 of the compilation of documents) was pressed.

- p.** Inviting the Court's attention to the cause list published by the State Commission it was argued that the official website of the said Commission showed the revision as listed for being heard by the relevant Bench of the Commission on February 19, 2026. Such publication in the list constituted sufficient notice and therefore it could not be contended that the order impugned was passed without putting the petitioner on notice.

PETITIONER'S REJOINDER SUBMISSIONS

- 6.** Mr. Chatterjee learned Senior Advocate appearing for the petitioner made the following submissions in rejoinder:-
- a.** It is incorrect to state that order dated January 18, 2024 passed by the District Commission only awarded a sum of Rs.49, 62,532. The same was also followed by an injunction on disconnection *"until the proper adjustment of the adverse effect of harmonic flow of electricity or for the matter removing the harmonic flow of power supply by any means"*.
 - b.** The petitioner would be entitled to further sums on account of adjustment of the harmonic distortion of supply and till such adjustment was made supply of electricity could not be disconnected.
 - c.** The order impugned was in any event passed without hearing the petitioner and the petitioner had no opportunity to rebut the submissions made on behalf of the opposite party before the State Commission.
 - d.** The compilation of bills and documents handed up to the Court does not form part of the records of the State Commission.
 - e.** No effort was taken to rectify the harmonic distortion of supply at all. The email dated August 08, 2025 relied on by the opposite party was a notice

for consumer satisfaction survey to be conducted by M/s. Deloitte and not for remedying the effect of harmonic distortion of supply.

- f. It was contended that Section 64 of the 2019 Act would not cure the defect in the constitution of a Bench of the State Commission.
- g. E-mails dated August 12, 2025 and September 09, 2025 were placed before the Court to show that the only demand that had been raised by the opposite party was for a sum of Rs.29,41,012/- and not more than that.

ANALYSIS & DECISION:

- 7. The first contention raised by the petitioner was that the order impugned was passed by a forum *coram non-judice*. Section 16(1-B) of the 1986 Act was placed to support such contention which reads as follows:-

“(1-B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.”

- 8. Judgments rendered by the Hon’ble Single and Hon’ble Division Benches of the High Court of Rajasthan in the case of **Kamal Travels Kokks International** (supra) and the order passed by the Hon’ble Supreme Court dismissing the SLP in the case of **Kamal Travels Kokks International** (supra) were placed before this Court to assert that any order passed by a

single member Bench of the State Commission would be void being passed by a forum *coram non-judice*.

9. The opposite party has sought to counter the salvo by demonstrating that the order dismissing the SLP was passed in the context of the predecessor Act of 1986 and the present case would be governed by the 2019 Act. Inviting the attention of this Court to the provisions of Section 64 of the 2019 Act, it was submitted that no order passed by the Commission would be rendered invalid by reason of defect in the constitution of the Commission.
10. Section 47(2) of the 2019 Act was also referred to argue that it was open to the President to constitute a Bench with one or more members as the President may deem fit.
11. Section 47(2) of the 2019 Act is not only in *pari materia* with the provisions of Section 16(1-B) (i) and (ii) of the 1986 Act taken cumulatively but also identically worded. The same is extracted hereinbelow:-

“(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the senior-most member shall preside over the Bench.”

12. Similarly, Section 47(3) of the 2019 Act is also in *pari materia* with and analogously worded as the provisions of Section 16(1-B) (iii) of the 1986 Act.

The same is reproduced hereunder:-

“(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other

members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.”

13. That being the situation, the order passed by the Hon’ble Supreme Court thereby dismissing the SLP in the case of **Kamal Travels Kokks International** (supra) cannot be said to be inapplicable to the facts of the present case merely because the same is governed by the provisions of the 2019 Act. This is all more so since the Hon’ble Supreme Court quoted the provisions of Section 16(1-B) of the 1986 Act in the said order and taking specific note thereof did “*not find any error*” in the order of the Hon’ble Rajasthan High Court which was impugned before it. This, in the considered view of this Court, constitutes an affirmation of the legal position regarding Section 16(1-B) of the 1986 Act (which is worded similarly to Section 47(2) of the 2019 Act).
14. This Court is cognizant of the legal position that dismissal of an SLP is not always a binding precedent on merits, but an order that quotes the specific Section while dismissing the SLP and then asserts that upon noting the provision quoted, no error is found in the order impugned constitutes a clear judicial stance of the Hon’ble Supreme Court thereby elevating the order from one of mere dismissal of SLP to an order affirming the legal principle regarding validity of Bench formation which binds all the Courts and Tribunals across the country under Article 141 of the Constitution of India. In such regard, the following observations of the Hon’ble Supreme Court in

the case of ***Kunhayammed & Others vs. State of Kerala & Another***⁴ deserve notice:-

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

[Emphasis added]

- 15.** It is equally well settled that interpretation of a provision in an earlier statute applies to a later statute that is in *pari materia* and identically worded.

⁴ (2000) 6 SCC 359

16. A few more Sections deserve notice before moving to the effect of Section 64 of the 2019 Act. Section 49 of the 2019 Act provides the “*Procedure applicable to State Commission*”. It reads thus:-

“49. (1) *The provisions relating to complaints under Sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.*

(2) *Without prejudice to the provisions of sub-Section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.”*

17. Thus Sections 35 to 39 of the 2019 Act which apply to District Commission have been made applicable to State Commission as well *with such modifications as may be necessary*. Section 49 of the 2019 Act incorporates the provisions of Section 35 to 39 of the 2019 Act by reference, applying them *mutatis mutandis* to State Commission. In the present context, Section 36 and Section 39(4) of the 2019 Act are relevant.

18. Section 36 of the 2019 Act provides for “Proceedings before District Commission” in the following manner:-

“36. (1) *Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together:*

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2) *On receipt of a complaint made under Section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same:*

Provided that a complaint shall not be rejected under this Section unless an opportunity of being heard has been given to the complainant: Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

(3) *Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.”*

[Emphasis by underlining]

19. Section 36 of the 2019 Act (which has been made applicable to the State Commission as aforesaid), reads in almost mandatory terms that the Bench must comprise of the President and at least one member. Consequently, a minimum of two members is compulsory to satisfy the requisite quorum for a functional Bench.

20. Section 39 of the 2019 Act provides for “Findings of District Commission”. Sub-section 4 thereof deserves notice in the present context. The same is extracted hereinbelow:-

“(4) Every order made by the District Commission under sub-section (1) shall be signed by the President and the member who conducted the proceeding:

Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member.”

21. The aforequoted provision which also applies to State Commission in terms of Section 49 of the 2019 Act, is yet another indicator that a single member cannot constitute the quorum for a Bench of the State Commission.

22. A cumulative reading of Section 47(2), Section 36 and 39 (3) of the 2019 Act leads to the inescapable conclusion that the expression “*with*” used after the expression “*President*” in Section 47(2) of the 2019 Act must be read in the sense of accompaniment. The provision “*a Bench may be constituted by the President with one or more members as the President may deem fit*” thus should mean that the President has the option to constitute a Bench comprising the President and one or more members. It may also be noted that the proviso to Section 47 of the 2019 Act indicates that there may be a Bench without the President where the senior-most member would preside. However, there is no option for the President to constitute a single member Bench. The quorum is therefore of two members only and not one.

23. Now what would happen if the President is not there or one of the members is not there?

24. A somewhat similar question was answered by the Hon'ble Supreme Court taking recourse to the provisions of Section 29A of the predecessor 1986 Act (equivalent to Section 64 of the 2019 Act) and the relevant provisions of West Bengal Consumer Protection Rules, 1987 in the case of **Gulzari Lal Agarwal vs. Accounts Officer**⁵. The following observations of the Hon'ble Supreme Court are apposite to the present context:-

"17. After giving careful thought to the rival contentions raised before us, we are of the considered opinion that the relevant provisions which we have quoted hereinabove will have to be construed harmoniously to promote the cause of the consumers under the Act. As indicated earlier, the definition of member includes the President and a member of a District Forum/State Commission. It is true that sub-Section (2) of Section 14 read with Section 18 requires that every proceeding referred to under sub-Section (1) shall be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. Sub-Section (2-A) is consequential in the sense that every order made by the State Commission under sub-Section (1) shall be signed by its President and the member or members who conducted the proceeding. The procedure applicable to the District Forum is made applicable to the State Commission vide Section 18 with such modifications as may be necessary. Plain reading of sub-Sections (2) and (2-A) of Section 14 may support the view taken by the National Commission but if these provisions are read with Section 29-A of the Act and sub-rules (9) and (10) of Rule 6, it would be quite clear that it could never be the intention of the legislature to stall or render the State Commission non-functional in the absence of the President either having not been appointed in time due to some valid reasons or if the President is on leave due to certain reasons beyond his control. Sub-Sections (2) and (2-A) of Section 14 and Section 18-A of the Act were brought into force with effect from 18-6-1993 whereas Section 29-A was made applicable from 15-6-1991. The Rules of 1987 were brought into force immediately. The complaint before the District Forum by the appellant was filed on 14-10-1993. Therefore, all these amended provisions were very much brought into force when the complaint was filed.

⁵ (1996) 10 SCC 590

Sub-Section (2) of Section 14 is a presumptuous provision where the President of the State Commission is functional but it would not be correct to say that if the President of the State Commission is non-functional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. In order to avoid such a situation, the State Government has framed the Rules and sub-rules (9) and (10) quoted hereinabove unmistakably provide answer to such a situation as in the present case. The only harmonious construction that could be given to sub-Sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10) is that as and when the President of the State Commission is functional, he along with at least one member sitting together shall conduct the proceeding but where the President being non-functional, sub-rules (9) and (10) of Rule 6 will govern the proceedings. Sub-rule (9) provides that where any such vacancy occurs in the office of the President of the State Commission, the seniormost (in order of appointment) member holding office for the time being, shall discharge the function of the President until a person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render non-functional for want of the President. It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the Section. It is this principle that needs to be made applicable while construing the provision of sub-Sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10)."

25. Importantly, in the case of **Gulzari Lal Agarwal** (supra) there was no lack of quorum. The Bench was said to be defective due to the absence of the President. The Hon'ble Supreme Court upheld the validity of the order passed by a Bench of two members sans the President taking resort to Section 29A of the 1986 Act. In the said case the post of the President in the State Commission was vacant as the incumbent therein had retired and consequently the case was decided by the other two members comprising the Bench.
26. Following the *dictum* of the Hon'ble Supreme Court in the case of **Gulzari Lal Agarwal** (supra), the two questions posed above can also be answered

on the basis of the relevant provisions of the 2019 Act and the Rules framed thereunder.

- 27.** Insofar as the situation involving absence of the President in the State Commission is concerned, the answer thereto may be found in the West Bengal Consumer Protection (Salary, allowances and conditions of service of President and Members of the State Commission and District Commission) Rules, 2022. Rule 6 of the said Rules provide as follows:-

“6. Casual vacancy: - *In case of a casual vacancy in the office of President in the State Commission or District Commission, as the case may be, the State Government shall have the power to appoint the senior most Member to officiate as President.”*

- 28.** Remedy in case of absence of a member of the State Commission has been directly provided for in the proviso to Section 36(1) of the 2019 Act which has already been quoted hereinabove and which is applicable to the State Commission as well in terms of Section 49 of the 2019 Act. It provides that in case of absence of a member, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

- 29.** Having regard to the aforesaid, Section 64 of the 2019 cannot be used to validate lack of quorum. As is evident from the marginal note/ head note of Section 64 of the 2019 Act, the same is designed to shield orders from invalidation due to vacancies and defects in appointments. The main body of the section clarifies that it protects proceedings affected by the defects in the constitution of the District Commission, State Commission and National Commission and not necessarily the Benches thereof. Every defect in the constitution of the Commission may not lead to a defect in a Bench thereof

however, if a defect in the Commission causes defect in a Bench the same would save the proceeding conducted by such Bench by the application of Section 64 of the 2019 Act as was one in the case of **Gulzari Lal Agarwal** (supra). However, a defect in the Bench without there being a defect in the Commission may not be cured by Section 64 of the 2019 Act.

30. The order impugned is therefore hit by *coram non judice*. While on this, it cannot also be lost sight of that it has been the opposite party's consistent case that a single member Bench of the State Commission did not constitute the requisite quorum and the matter was transferred to the Principal Bench from the Asansol circuit Bench only due to lack of quorum. Despite all this the matter was heard by a single member Bench and the impugned order was passed.
31. Even otherwise, the order impugned deserves interference as it has been passed in derogation of the principles of natural justice. The petitioner's contention that the order under challenge was passed without notice was countered by the opposite party by asserting that inclusion of the matter in the cause list itself amounted to sufficient notice.
32. While publication of a matter in the cause list of a Court ordinarily constitutes constructive notice to the parties, but such rule may not be aptly applicable to the facts of the present case. The reasons for such observation would be clear from the following paragraphs.
33. The revision that was originally filed before the Asansol Circuit Bench of the State Commission stood transferred to the Principal Bench of the said Commission by an order dated September 09, 2025 passed by this Court in CAN 01 of 2025 filed in connection with C.O. 1562 of 2025. The records of

the said revision were actually transferred from the Asansol Circuit Bench to the Principal Bench of the State Commission by an order dated October 15, 2025 with a direction to the parties to appear before the principal Bench on November 14, 2025. It is the petitioner's case that on November 14, 2025 the matter was not listed before the Principal Bench and no further date was fixed by the Principal Bench. Nothing to the contrary has been produced before this Court. It is thus clear that February 19, 2026 - the date when the matter was heard and the order impugned was passed - was not a prescheduled date.

- 34.** If on a particular date which is fixed for appearance of parties before the State Commission, the case is not taken up and no subsequent date is fixed, it would be fairly reasonable for a party to expect that a notice would be served upon to it before the case is taken up on a date that was never fixed in the presence of the parties. It is true that in the age of digital proficiency, status of a case may be available at the click of a button but it would be too unreasonable to expect of a litigant that it should keep on checking the case status everyday without there being any indication or clue as regards the date on which the matter is supposed to be taken up, in order to avert an *ex parte* order. Furthermore, since it is the petitioner's case that the matter was to be heard by the President (or the Bench presided over by the President) the petitioner may not have checked the lists pertaining to other Benches at all.
- 35.** For all the reasons aforesaid, the impugned order dated February 19, 2026 passed by the State Commission cannot be sustained. The same stands set aside.

- 36.** Now once the impugned order is set aside, the order dated September 03, 2024 passed by the District Commission gets resuscitated, but the position that was prevailing at the time when the said order dated September 03, 2024 was passed no longer remains. The question which will then arise is whether this Court should order restitution of the earlier position i.e. pass an order of *status quo ante*.
- 37.** It is well settled that power to direct restitution is inherent in every Court and is to be exercised like a duty when situation demands. However, the nature and extent of restitution will be required to be decided so that the order does not trump real justice and such that equities are balanced. This Court is in any case exercising jurisdiction under Article 227 of the Constitution of India, which is supervisory in scope, discretionary in exercise and equitable in nature.
- 38.** Upon the order of injunction dated September 03, 2024 being vacated, the opposite party has disconnected the petitioner's supply of electricity and encashed the Bank Guarantee that was there as security deposit.
- 39.** It had been argued on behalf of the opposite party that the order of injunction on disconnection of electricity had been passed by the District Commission without appreciating that the disconnection notice had been issued for reasons wholly unconnected with the *lis* before the District Commission. Relying on APTEL's order, it was submitted that the petitioner had not challenged the tariff revision order before APTEL and upon the protective umbrella of injunction initially granted by APTEL being removed by it by the order dated August 22, 2024 which had attained finality, it was not open to the petitioner to resist disconnection of electricity which was

resorted to by the opposite party for non-payment of dues demanded by it on the basis of tariff revision in terms of orders of APTEL.

40. It was further contended that the petitioner was in any event liable for further dues in respect of Unit I, electricity supply whereof had been disconnected at the request of the petitioner.

41. The petitioner on the other hand has opposed such contention and relied on the concluding portion of the order passed by the District Commission which reads thus:-

“that this case be and the same is decreed in part ex-parte against the OPs with cost of Rs. 1,00,000/- (One Lakh Only). The complainant do get decree for damages of Rs. 46,62,532/- (Forty-six Lakh Sixty-two Thousand Five Hundred Thirty-two only) and compensation of Rs. 2,00,000/- (Two Lakh only) along with a decree in the form of direction/restraining the OPs not to disconnect the electric supply of the factory of the complainant until the proper adjustment of the adverse effect of the harmonic flow of power supply or for the matter removing the harmonic power supply by any means so that the complainant shall get harmonic free flow of electricity in terms of the agreement in between the parties.

The OPs are hereby directed to comply the above order by way of making payment of the litigation cost of Rs. 1,00,000/- (One Lakh only), damages charge of Rs. 46,62,532/- (Forty-six Lakh Sixty-two Thousand Five Hundred Thirty-two only) and compensation Rs. 2,00,000/- (Two Lakh only) i.e. Rs. 46,62,532/- + Rs. 2,00,000/- + Rs. 1,00,000/- i.e. total amount of Rs. 49,62,532/- (Forty-nine Lakh Sixty-two Thousand Five Hundred Thirty-two only) to the complainant within 60 days from the date of this Judgment/Order. The Opposite Parties are hereby restrained from disconnecting the supply of electricity to the factory of the complainant until the proper adjustment of the adverse effect of harmonic flow of electricity or for the matter removing the harmonic flow of power supply by any means.”

42. Further, e-mails dated August 12, 2025 and September 09, 2025 were placed before the Court to show that the only demand that had been raised by the opposite party was for a sum of Rs.29,41,102/- and not more than that.

- 43.** It is however noticed by this Court that the said e-mails pertain to a tariff revision for the period 2018-20 and not 2017-18.
- 44.** The order dated January 18, 2024 passed by the District Commission thus injuncts the opposite party from disconnecting electricity till either the adverse effect of harmonic supply is adjusted or the harmonic supply is corrected/removed. The parties are at loggerheads on the point that correction was attempted by the opposite party but it was impeded by the petitioner or not permitted by the petitioner. Such correction is, therefore, yet to be done.
- 45.** Two compilations of documents and bills have been produced before this Court in support of the contention of the opposite party and a separate bunch of emails has been produced by the petitioner in support of its contention
- 46.** There is nothing on record to show that these were placed before either the District Commission or even before the single member Bench of the State Commission. It is however, an entirely different aspect that even if the same had been placed before the single member Bench, the same would have made no difference in the facts of the present case where the order itself has been found to be bad for the reasons mentioned hereinabove. Still, it needs to be recorded just for the sake of completeness.
- 47.** While the pleadings of the opposite party before the State Commission in revision indicates that some submission was made before the District Commission as regards the un-connectedness of the issue before the District Commission and the subject of the disconnection notice, there is nothing either in the order passed by the District Commission or in the one

impugned before this Court that would suggest that such submission was made and not considered by the District Commission. In any case the pleadings before State Commission do not refer to the several materials that were placed before this Court on behalf of the opposite party. The order impugned also does not reflect the same.

48. The issue therefore needs to be finally decided by the State Commission upon considering the material that might be placed before it and upon hearing the parties. It would not be appropriate for this Court to appreciate the said documents while exercising supervisory jurisdiction under Article 227 of the Constitution of India and return any finding even *prima facie*.
49. However, a *prima facie* opinion can always be formed on the basis of the material already on record before the District and State forums for the purpose of deciding as to whether an order of restitution should be granted or refused or as to the imposition of condition for restitution.
50. In the instant case the complaint case of the petitioner, the order dated January 18, 2024 and the opposite party's revision on the basis of which the order impugned was passed would suffice for the moment.
51. The consumer complaint was filed by the petitioner in the year 2009 alleging abnormality in bills owing to harmonic supply of electricity as also claiming damages due to such harmonic supply. The order dated January 18, 2024 passed by the District Commission rejected the petitioner's challenge to the bills but found that there was harmonic supply which needed correction and at the same time injuncted the opposite party from disconnecting the supply till the time the adverse effect of harmonic supply was adjusted or the harmonic supply was corrected.

- 52.** The revisional application filed by the opposite party before the State Commission indicates that the claim on the basis whereof disconnection notice had been issued to the petitioner pertains to arrears of electricity dues that have arisen upon tariff revision which date back to 2017-18. The period for which arrears of electricity dues have been claimed upon tariff revision is therefore prior to the date of the order of the District Commission. It would therefore be required to be examined as to whether the injunction on disconnection granted by the order dated January 18, 2024 would apply to the claim for arrears for the period 2017-18. The notice dated August 26, 2024 which has been issued to the petitioner clearly refers to the APTLE order as well as the tariff revision for the period 2017-18.
- 53.** It is not in dispute that the petitioner has been paying the consumption bills regularly. It was therefore not the understanding of the petitioner also that the order of injunction on disconnection would protect it even from non-payment of the consumption bills. In fact the petitioner has clearly stated in the revisional application before this Court that it has *“till this date, cleared all running electricity consumption bills without any default”*.
- 54.** Such bills were/are for realizing charges for consumption of electricity. What is the basis for calculating and demanding such charges? The short one - word answer would be “Tariff” i.e. the rate at which electricity is sold by the electricity distribution/generation licensee to the consumer. What is being demanded by the opposite party then? The demand is of an amount which the opposite party has become entitled to by reason of revision of the tariff by WBERC and removal of protection of injunction granted earlier by APTEL. That is to say that if tariff was “x” in 2017-18 and bills have been raised by

calculating consumption charges taking x as the tariff upon the same being revised to “x+y” the incremental component is payable by the petitioner to the opposite party. If the tariff had been “x+y” from the very beginning the same would have been paid by the petitioner at that rate only. Therefore *prima facie* it appears that the order of injunction may not extend to disconnection for non-payment of arrears of tariff revision. To put it simply if the injunction does not apply to consumption bills it should reasonably and by parity of reasoning not apply to revision of consumption bills also.

- 55.** There is another way to look at it. Once the challenge thrown to the bills in the consumer complaint filed by the opposite party was repelled by the District Forum, the issue as regards inflated charging no longer remained. The tariff at which the bills were raised earlier got revised and that being so a further bill was raised by the opposite party for the year 2017-18. Such bills, in the *prima facie* view of the Court could not be assailed before the consumer forum in the proceeding for execution of the order dated January 18, 2024. The notice of disconnection issued for non-payment of such bills was only consequential in nature. The same, therefore, could also not be challenged in the said execution case.
- 56.** By the order dated January 18, 2024 the District Commission had enjoined the opposite party “*from disconnecting the supply of electricity to the factory of the complainant until the proper adjustment of the adverse effect of harmonic flow of electricity or for the matter removing the harmonic flow of power supply by any means.*” It was submitted by the petitioner that in terms of the same, the petitioner is entitled to further sums in terms of such observation.

- 57.** That may be one way of interpreting the order dated January 18, 2024 in the light of prayer (e) of the consumer complaint filed by the petitioner. However, the same may not be the only interpretation possible. The actual meaning thereof would ultimately be decided by the State Commission where the said order is pending in appeal. The present stage is one where the question as to the nature and extent of restitution is being considered. In such context, the interpretation appears to be *prima facie* reasonable.
- 58.** Insofar as the opposite party's claim pertaining to Unit –I is concerned, this Court is not minded to consider the same for the purpose of restitution for two reasons. Firstly a suit is pending between the parties concerning Unit- I. Secondly, the scope of this application is disconnection of electricity supply to Unit –II upon the order impugned having been passed and restoration thereof.
- 59.** Having taken such *prima facie* view of the matter, equities will be balanced if an order directing restoration of supply to Unit-I of the petitioner is made subject to the petitioner putting in/furnishing security for such supply in accordance with law.
- 60.** This Court has held that equity would be balanced upon passing the aforesaid order for the following reasons:
- a. The opposite party's claim as regards Unit-II is Rs.1,96,13,365/-.
 - b. The same contains four sub-heads- (i) Dues for the year 2017-18 amounting to Rs.84,85,351/- (ii) Dues for the year 2018-20 amounting to Rs.29,41,012/- (iii) Cumulative TDS dues amounting to Rs.51,740/- and (iv) Provisional accrued DPS to the tune of Rs. 81,35,262/-

- c. Out of the said total sum of Rs.1,96,13,365/-, the opposite party has already recovered a sum of Rs.1, 21,48,000/- by encashing the Bank Guarantee towards security deposit upon disconnection of the supply.
- d. The opposite party is liable to the petitioner in the sum of Rs. 49,62,532/- in terms of the order dated January 18, 2024 passed by the District Commission (at least as at present and till such time the said order is set aside or interfered with in appeal)
- e. Insofar as the sum of Rs.29,41,012/- is concerned, the same pertains to arrears of tariff revision for the period 2018-20.
- f. That being so, a sizeable portion of the dues of the opposite party appear to have been be taken care of. All the more so when the compensation aspect pertaining to adjustment of harmonic distortion is also there which cannot also be lost sight of at this stage.
- g. Upon encashment of the Bank Guarantee, the security deposit in respect of the petitioner's supply has been depleted fully and has come to nil. Therefore, the petitioner would be required to replenish the same so as to enjoy restoration of supply to its Unit- II.

61. In view of the aforesaid, it is directed that the opposite party shall restore supply to the petitioner immediately upon the petitioner furnishing security deposit therefor in accordance with law.

62. It is clarified that this Court has not expressed any opinion on the legality or validity or otherwise of the encashment of Bank Guarantee and the order dated January 18, 2024 passed by the District Commission. All observations made hereinabove for the purpose of granting restoration are tentative and

prima facie. The State Commission shall decide the matter afresh, in accordance with law, without being influenced by any of the observations made hereinabove excepting those that have been made while concluding that a single member Bench is *coram non judice* and that the order impugned has been passed in violation of principles of natural justice.

- 63.** C.O. 694 of 2026 stands disposed of with the above observations. No costs.
- 64.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)