A ORISSA STATE ELECTRICITY BOARD AND ANR. ETC.

v.

M/S IPI STEEL LTD. ETC.

APRIL 21, 1995

B [B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Indian Electricity Act, 1910—Section 22-B—Orissa State Electricity Board (General Conditions of Supply) Regulation 1981—Proviso to Regulation 46 as substituted by notification dated June 25, 1987—Order under Sec. C *22-B to cut supply of energy by fifty per cent—Regulation 46 substituted to provide for two part levy—Consumer charged for actual consumption plus the maximum demand but exempted from payment of minimum charges during the period of restricted supply—Held : Not unreasonable and arbitrary—Justification for levy of maximum demand charges under two part levy.*

D **The respondent had entered into an agreement with the appellant Board for supply of power upto but not exceeding a maximum demand of 7778 KVA/7000 KW. The agreement between the appellant and the respondent stipulated that the provision of the Orissa State Electricity Board (General Conditions of Supply) Regulation, 1981 as modified from time to** E **time, shall form a part of the agreement and shall bind the respondent.**

The agreement incorporated payment of electricity charges on the basis of two part levy where the consumer, apart from the charges for the actual consumption of electricity, also pays charges for the maximum demand (the highest level/load at which the consumer draws electricity F **over any period of thirty minutes in a month) subject to payment of the minimum charges, which in this case was 80% of the contract demand. This meant that even if the maximum demand of the consumer was less than 80% of the contract demand of 7778 KVA/7000 KW, as contemplated in the agreement the consumer has to pay charges for 80% of the contract** G **demand.**

For the period January, 1989 to August, 1990, the Government of Orissa, in view of short fall in generation of power, made an order under Section 22-B of the Indian Electricity Act, 1990 read with Section 78(A) of the Electricity (Supply) Act, 1948 directing the appellant to reduce the H **supply of energy to the consumers to the extent as specified in the schedule**

to the said order. The effect of the order was that the supply of energy to the respondent's industry was reduced by 50 per cent. However, it was open to the respondent to distribute the maximum demand permitted to him in any manner convenient to him. If the respondent wished to run his unit drawing energy at the contract demand level of 7778 KVA he could do so but could run his unit for six months thus observing the 50 per cent cut or in the alternative the respondent could run his unit throughout the year but at half the level of contract demand, i.e. at 3889 KVA.

Subsequently, by a notification dated June 25, 1987, the appellant substituted Regulation 46 of the Orissa State Electricity Board (General Conditions of Supply) Regulation, 1981 providing that during the period of operation of an order under Section 22-B of the Indian Electricity Act, 1910 the appellant shall be under an obligation to supply energy only in accordance with the restrictions placed by that order. The proviso to the substituted Regulation 46 provided that during the period of restricted supply, if the restriction on supply of electricity exceeds 150 hours in a month, the consumer shall not be liable to pay the minimum charges but only charges for the actual energy consumption plus charges for the maximum demand. In the present case, as restriction was for more than 150 hours, the proviso to Regulation 46 was applicable.

The respondent challenged the validity of the proviso to Regulation 46, by way a Writ Petition in the High Court. Before the High Court, the respondent contended that the proviso was unreasonable, arbitrary and confiscatory in so far as during the period of restricted supply the supply of power is irregular. It was contended by the respondent that the appellant charges the consumer on the basis of maximum demand which means that even if the consumer draws 7778 KVA on the first day of the month and thereafter there is no drawal throughout the month, the consumer would be charged for 7778 KVA on the basis of maximum demand. Specific instance of January, 1989 was pointed out in which month the quantity of demand was 478.3 KVA but the respondent was charged at 683 KVA on the basis of maximum demand.

The High Court allowed the writ petition of the respondent relying, *inter alia,* upon the instance of January, 1989 to hold that the proviso to Regulation 46 was unreasonable and arbitrary.

In appeal to this court, the appellant assailed the order of the High

A Court pointing out that the instance of January 1989 taken by the High Court was an entreme case as in January, 1989 there was system disturbance and the respondent had already been given remission on that account.

Allowing the appeal, this Court

B

HELD : 1.1. There is no arbitrariness or unreasonableness in the proviso to Regulation 46 of the Orissa State Electricity Board (General Conditions of Supply) Regulation, 1981. It means and says that during the periods of restricted supply of power, the consumer pays the energy charges for the actual consumption plus maximum demand charges for the maximum demand availed of by him at the rate prescribed in the agreement. In no event, a consumer is made to pay maximum demand charges for more than what he actually avails. The over-all limitation is that he must have remained within the fifty per cent quota allotted to him during the year of restriction; if the consumer avails of energy at half the maximum demand/contract demand, he will pay demand charges only for that. [708-D, 688-C, 708-C, 708-B, C, 707-H]

C

D

1.2. Even when there is no power cut in force, if an industry draws energy at 7000 KVA on the first day of the month and does not draw the energy at all on the subsequent twenty nine days, it would still be required to pay the demand charges at 7000 KVA X Rs. 35. This is because the demand charges are meant "to cover investment, installation and the standing charges to some extent." [708-F]

E

Bihar State Electricity Board and Anr. v. *M/s. Dhanawat Rice and Oil Mills*, [1989] 1 SCC 452; *M/s. Northern India Iron and Steel Co.* v. *The State of Haryana and Anr.*, [1976] 2 SCR 677 and *Maharashtra State Electricity Board* v. *Kalyan Borough Municipality*, [1968] 3 SCR 137, distinguished.

F

2. The validity of regulations, which have force of law, should not be judged by taking either a stray case or an unusual case but on the generality of the situation. Situation in January 1989 was an unusual situation for which appropriate relief has been given to the respondent. [709-H, 710-A, 710-C]

G

3.1. The Electricity Board produces energy required by the factory and keeps it in readiness for that factory. Electricity once generated cannot be stored for future use. This is the reason and the justification for the

H

demand charges and the manner of charging for it. [693-G] A

3.2. There is yet another justification for levy of demand charges. Demand charges and consumption charges are intended to defray different items. Broadly speaking, while demand charges are meant to defray the capital costs, consumption charges are supposed to meet the running charges. Every Electricity Board requires machinery, plant, equipment, B **sub-stations, transmission lines and so on, all of which require a huge capital outlay. The Board like any other corporation has to raise funds for the purpose which means it has to obtain loans. The loan have to be repaid, and with interest. Provision has to be made for depreciation of machinery, equipment and buildings. Plaints, machines, stations and transmission** C **lines have to maintained, all of which requires a huge staff. It is to meet the capital outlay that demand charges are levied and collected whereas the consumption charges are levied and collected to meet running charges. [693-H, 694-A, B]**

Bihar State Electricity Board, Patna and Ors. **v.** *M/s. Green Rubber* D *Industries and Ors.*, **[1990] 1 SCC 731;** *Saila Bala Roy* **v.** *Chairman, Darjeeling Municipality*, **AIR (1936) Cal. 265;** *M.G. Natesa Chettiar* **v.** *Madras State Electricity Board*, **(1969) Mad. L.J. 69 and** *Watikins Mayor and Co.* **v.** *Jullundhar Electric Supply Co.*, **AIR (1955) Punj. 133; referred to.**

4. An order made under Section 22-B of the Indian Electricity Act, E **1910 is binding upon the Electricity Board and overrides the contracts and agreements which the Board may have entered into with the consumers. When an order section 22-B is issued, the Board is freed from the obligation to supply energy at the level stipulated in the agreements with the consumers and its obligation is to supply in accordance with the order** F **under Section 22-B. [707-C, 696-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4689 of 1995.

From the Judgment and Order dated 17.5.94 of the Orissa High G Court in O.J.C. No. 3467 of 1990.

N.S. Hegde, Kapilsibal, Raj K. Mehta, Ms. Mana Chakraborty, Mrs. Indira Sawhney, B.A. Mohanty, Ms. Kirti Mishra, Praveen Kumar, V. Kaushal, D.N. Dwivedi, J.B. Dadachanji and S. Sukumaran for JBD & Co, H

A for the appearing parties.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the Parties.

B

The Orissa State Electricity Board is questioning in this appeal the correctness of the judgment of the Orissa High Court declaring the proviso to Regulation 46 of the Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981, (hereinafter referred to as "Regulations") as unreasonable, arbitrary and illegal. Having struck down the proviso - i.e., the proviso as substituted by Notification dated June 25, 1987 - the High Court has directed the Board to revise the bills issued to the respondent-writ petitioner "on the basis of proportionate reduction taking into account the actual consumption of energy".

C

D The respondent-writ petitioner (M/s. IPI Steel Limited) has a mini steel plant in Orissa. On August 16, 1984, it had entered into an agreement with the appellant-Board whereunder the Board undertook to supply power "upto but not exceeding a maximum demand of 7778 KVA/7000 KW". The agreement contains the following stipulations among others :

E

(1) "The consumer has perused a copy of the Orissa State Electricity Board (General Conditions of supply) Regulations, 1981, understood its contents and undertakes to observe and abide by all the terms and conditions stipulated therein *including all future modifications thereto*, to the extent they are applicable to him. The Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981 *as modified from time to time* shall be deemed to form part of this Agreement" *[Vide* clause (2)] (Emphasis added).

F

(2) "The consumer shall pay to the Engineer for the power demand and electrical energy supplied under this Agreement in accordance with the tariff as mentioned below, subject to any revision that may be made by the Board from time to time.

G

Large Industries

H (a) The monthly charges shall be :

Demand charges at Rs. 35.00 per KVA of maximum demand plus energy charges at the following rate on units metered less units billed separately under (c) and (d) below :

Paise 36.00 for each unit *without prejudice to payment of monthly minimum charges indicated below* :

(b) *The monthly minimum charges* shall be calculated at the above rates, on a demand of 80 percent contract demand and on units calculated at an average power factor of 0.9 and an average load factor of 15 per cent on the said contract demand. [*Vide clause (7)*]". (The remaining portion of clause (7) is omitted as unnecessary.)

The respondent complains that notwithstanding the agreement, the Board was in no position to supply the full quantity of energy stipulated in the agreement. It is, however, not necessary to consider the said plea, since we are concerned herein with the period January, 1989 to August, 1990 alone. During this period, an order under Section 22-B of the Indian Electricity Act, 1910 read with Section 78(A) of the Electricity (Supply) Act, 1948 issued by the Government of Orissa on February 14, 1990 was in force. It would be appropriate to notice the relevant contents of the Order. The Order recited that since the total availability of power from the generating stations in Orissa will fall short of the total requirement of power in the State substantially, the State Government is of the opinion that for maintaining the supply and securing equitable distribution of energy, it is expedient to regulate the supply, distribution, consumption and use of energy from the Orissa grid. The Order directed "the Orissa State Electricity Board to reduce the supply of energy so as to allow the consumer to avail to the extent as specified in the Annexure anything in any contract agreement or requisition for supply or increase in the supply of energy notwithstanding". Contravention of the provisions of the Order rendered the consumer liable for disconnection of service line without notice and for payment of energy charges at double the highest rate of energy charges for any category in addition to the penalties. In the Annexure to the said order, the respondent, M/s. IPI Steel occurs at Sl. No. 13 under the Heading "Large Industries". It would be appropriate to extract the schedule insofar as it concerns the respondent :

Sl. No.	Name of the Industry	Allowable drawal		Provisional allotment for the water 90-91 (1.7.90 to 30.6.91)
		Period of water yr. 1989-(1.7.89 to 30.6.90)	Quantity in Million KWH.	
1	2	3	4	5
Large Industries				
13.	IPI STEEL Gundichapada	1.7.89 to 30.6.90	16.863	16.863

It is agreed by the parties that the effect of the above order is to reduce the supply by fifty per cent. The Electricity Board has explained how the said fifty per cent reduction is being implemented and operated, by producing before us a statement relating to the water year 1988-89. It would be appropriate to extract the said statement:

M/S. IPI STEEL LTD. : DHENKANAL

1. Contract Demand (C.D.) - 7778KVA (Kilo-volt- Amperes)
2. 80% of C.D. - 0.8 x 7778 KVA - 6222.4 KVA
3. 100% requirement of energy for the water year 1988-89 - 37.467 MU (Million Units)
4. % of level of allocation for the water year 1988-89 - 50% of the full requirement
5. Energy allocation for the year 1988-89 - 18.737 MU

Sl. No.	Maximum demand in KVA	Month	Rate per KVA	Charges	Energy entitlement per month (in MU)	Liability of consumer for payment of 80% of C.D.	Relief	Total consumption
1.	7778	X 6	Rs. 35	Rs. 16,33,380 (no charge for six months)	3.122 (18.737)/6	Rs. 29,40,084	Rs. 13,00,704	Rs. 18,737 MU
2.	3889	X 12	Rs. 35	Rs. 16,33,380	1.561	Rs. 26,13,405	Rs. 9,80,100	Rs. 18,737 MU
3.	5185	X 9	Rs. 35	Rs. 16,33,275 (no charge for 3 months)	2.081 (18.737)/3	Rs. 19,60,056	Rs. 3,26,781	Rs. 18,737 MU

Shri Santosh Hegde, learned counsel for the Orissa Electricity Board explains the contents of the above table thus : the maximum demand allowed under the Agreement to the respondent is 7778 KVA; the cut is fifty per cent, i.e., to the extent of half; the consumer, however, has been given an option in the matter of utilisation of the fifty per cent allowed to him. It is open to him to avail of the maximum demand every month but in such a case he can run his factory only for six months as mentioned under Sl.No.1 in the Table contained in the above statement; if, however, the consumer wants to operate his plant for twelve months in the year, he has to reduce his maximum demand to half of 7778 KVA, i.e., to 3889 as mentioned under Sl. No. 2 of the Table; it is equally open to the consumer to distribute the maximum demand permitted to him in such a manner that his plant works for nine months in the year availing 5185 KVA as mentioned under SL. No. 3 of the Table - or for that matter, in any other manner convenient to him. But all this is subject to the overall ceiling prescribed during such period. Sri Hegde submits that energy was made available to all the bulk consumers on the above basis, which fact, he says, is not disputed by the respondent nor any complaint is made by him that energy was not made available in the manner stated in the said tabular Statement.

At this stage, it would be appropriate to explain certain concepts relevant herein. The expression "contract demand" is defined in clause (viii) of Regulation 3 of the Regulations. The definition reads thus :

> "(viii) Contract demand, means the maximum kilowatt (KW) or kilo-volt-ampere (KVA) as the case may be agreed to be supplied by the Board and contracted by the consumer".

(In the case of the respondent, the contract demand, as stated hereinabove, is 7778 KVA.)

The expression "minimum charges" is referred to and explained in clause 7(b) of the Agreement between the parties. The clause, extracted hereinabove, says that "the monthly minimum charges shall be calculated at the above rates on a demand eighty per cent of contract demand and on units calculated at an average power factor of 0.9 and an average load factor of fifteen per cent on the said contract demand." (The reason for prescribing the minimum charges is that the Board generates and keeps in readiness, energy for the respondent to the extent contract demand. Even

A if the respondent does not avail of it, the energy cannot be stored or preserved. The respondent is, therefore, made to pay for the energy generated for his use even though he does not avail of it at the contracted level; even so, the minimum charges are pegged at eighty per cent.)

B The expression "maximum demand" is defined in clause (xx) of Regulation 3. It reads :

> "(xx) Maximum demand, means the average amount of kilowatts or kilovolt-amperes as the case may be, delivered to the point of supply of the consumer and recorded during a thirty minutes' period or maximum use in the month or it shall mean twice the largest number of kilowatt-hours (KWH) or kilovolt- ampere-hours (KVAH) delivered to the point of supply by the consumer during any consecutive 30 minutes' period. The Board, however, reserves the right to shorten this period in special cases, if necessary."

C

D

The above definition has to be read in the light of and in continuation of the definition of the said expression of clause (8) of Section 2 of the Electricity (Supply) Act, 1948, which runs thus :

> "(8). "Maximum demand" in relation of any period shall, unless otherwise provided in any general or special order of the State Government, mean twice the largest number of kilowatt-hours or kilo-volt-ampere-hours supplied and taken during any consecutive thirty minutes in that period."

E

F It is necessary to elaborate what does not expression "maximum demand" mean and signify? In the case of bulk consumers and large scale consumers, the Electricity Boards all over the country generally adopt a two-part levy system. One part is called the 'maximum demand charges' and the other part 'consumption charges'. Every such consumer is provided with two meters. One is called the 'trivector meter' and the other is the G normal meter which records the total quantity of energy consumed over a given period - which is ordinarily a month. The meter which records the total consumption requires no explanation or elaboration since we are all aware of it. It is the other meter which requires some explanation. Now every large scale consumer known the amount of energy required by him H and requests for it from the Board. If the Board agrees to supply that or

any other particular amount of energy, it make necessary arrangements therefor by laying the lines to the extent necessary and installing other requisite equipment. It is obvious that if a factory uses energy at a particular level/load and for a particular period, it consumes a particular quantity of energy. The trivector meter records the highest level/load at which the energy is drawn over any thirty- minute period in a month while the other meter records the total consumption of energy in units in the month. Let us take the case of the respondent to illustrate the point. The maximum demand in his case is upto but not exceeding 7778 KVA. That is his requirement. In the normal times, he is entitled to draw energy at that level/load. That is this maximum demand under the agreement. But he may not always do so. Say, in a given month, he draws energy at 6000 KVA level only, even then he has to pay the minimum charges as stipulated in the agreement. But if he draws and consumes energy exceeding eight per cent of the energy, he pays demand and energy charges for what he utilises. Now, let us notice how the trivector meter, i.e., the meter which records the maximum demand works; the meter is so designed that it only records the maximum load/level at which energy is drawn over any thirty-minute period in a month. It only goes forward but never goes back until it is put back manually. To be more precise, suppose the respondent had drawn energy at 7770 KVA for a thirty-minute period on the first day of the month, the meter will record that figure and will stay there even if the respondent consumes at 7000 or lesser KVA level during the rest of the month. From this circumstances, however, one cannot jump to the conclusion that it is an arbitrary way of levying consumption charges. Normally speaking, a factory utilises energy at a broadly constant level. May be, on certain occasions, whether on account of breakdowns, strikes or shutdowns or for other reasons, the factory may not utilise energy at the requisite level over certain periods, but these are exceptions. Every factory expects to work normally. So does the Electricity Board expect - and accordingly produces energy required by the factory and keeps it in readiness for that factory - keeping it ready on tap, so to speak. As already emphasised, electricity once generated cannot be stored for future use. This is the reason and the justification for the demand charges and the manner of charging for it. There is yet another justification for this type of levy and it is this: demand charges and consumption charges are intended to defray different items. Broadly speaking, while demand charges are meant to defray the capital costs, consumption charges are supposed to meet the

A running charges. Every Electricity Board requires machinery, plant, equipment, sub-stations, transmission lines and so on, all of which require a huge capital outlay. The Board like any other corporation has to raise funds for the purpose which means it has to obtain loans. The loans have to be repaid, and with interest. Provision has to be made for depreciation of machinery equipment and buildings. Plants, machines, stations and transB mission lines have to be maintained, all of which requires a huge staff. It is to meet the capital outlay that demand charges are levied and collected whereas the consumption charges are levied and collected to meet the running charges.

C Pausing here for a moment, we may explain the importance and significance of maximum demand. The maximum demand of a given plant/factory determines the type of lines to be laid and the power of transformers and other equipment to be installed for the purpose. A factory having a maximum demand of say 1000 KVA and a factory having D a maximum demand of 10,000 KVA require different type of lines and other equipment for providing supply to them. In the case of latter, lines have to be of a more load-bearing variety. Transformers have to be installed and of more capacity. Sometimes in the case of bulk consumers even a sub-station may have to be established exclusively for such factory/plant. Very often these industries are situated away from power stations and main E transmission lines which means laying special power lines over consideration distances to give the supply connection. As a matter of fact, the significance of the maximum demand would be evident from the fact that the agreement between the Board and consumer (like the respondent) specifies only the maximum demand and not the units allowed to be F consumed. The agreement concerned herein prescribes the maximum, demand at 7778 KVA but does not prescribe the total number of units of energy allowed to be consumed. This is for a reason, explains Sri Hegde, that the total number of units energy consumed is determined by the load/level at which power is drawn. The formula, taking the case of the respondent is stated to be - 100% unrestricted energy requirement of the G respondent = contract demand in KVA x power factor x load factor x total number of hours in a year. In concrete terms, it means - 7778 KVA x 0.90 x 0.611 x 8760 = 37,467,590 KWH (units) = 37.46759 MU (Million Units). This formula, as it states expressly, is premised on unrestricted supply. Problems arise only when restrictions are placed on consumption on H account of fall in production of electricity by the Board, as would be

explained hereinafter. A

Even during normal times, the Electricity Boards are not able to generate energy commensurate with their installed capacity, though it is true, they do try to achieve it. But situations arise - situations beyond their control - when they are not able to produce even that much energy as they generally do. They are obliged to cut down their production substantially B - at times, as much as by half or more. We are told that the power generated by Hydro-electric stations in Orissa forms a substantial chunk of the total energy produced by the Board. If in a given year, the rains fail and more particularly, if the rains fail during who or three years consecutively, the production of energy by Hydro-electric units goes down substantially. Even in the case of thermal stations, problems of supply of coal and C oil, quality of coal supplied and other problems result in the Board producing electricity at a level far lower than what it normally does. During periods of such reduced generation/supply, problems of distribution arise. There are several categories of consumers; industrial (including bulk consumers), commercial, agricultural and domestic besides some other D categories. Naturally, everybody cannot be supplied the full quantity of energy required; it has to be rationed - and may be, supply staggered. It is precisely to provide for such situations that Section 22-B of the Indian Electricity Act, 1910 empowers the Government to make an order regulating the distribution and consumption of energy. We may now read the E section :

> "22-B. Power to control the distribution and consumption of energy - (1) If the State Government is of opinion that it is necessary or expedient so to do, for maintaining the supply and securing the equitable distribution of energy it may by order provide for regulating the supply, distribution, consumption or use thereof. F
>
> (2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may direct the licensee not to comply, except with the permission of the State Government, G with -
>
> (i) the provisions of any contract, agreement or requisition whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959), for the supply (other than the resumption of a supply) or an H

A increase in the supply of any energy to any person, or

(ii) any requisition for the resumption of supply of energy to a consumer after a period of six months, from the date of its discontinuance, or

B (iii) any requisition for the resumption of supply of energy made within six months of its discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance."

It is obvious that an order made under Section 22-B is binding upon C the Electricity Board and over-rides the contracts and agreements which the Board may have entered into with the consumers. When an order under Section 22-B is issued, the Board is freed from the obligation to supply energy at the level stipulated in the agreements with the consumers and its obligation is to supply in accordance with the order under Section 22-B. D On this score, there is no controversy. The controversy is with respect to the power of the Board to collect maximum demand charges at the rate prescribed in the agreement during such periods of restricted supply. In short, the question is with respect to the power of the Board to frame Regulation 46 and more particularly, the reasonableness of the proviso to the said Regulation.

E

Section 79 of the Electricity (Supply) Act, 1948 empowers the Board to make Regulations to provide for matters specified therein. *Inter alia*, the matters specified include "(j) principles governing the supply of electricity by the Board to persons other than licensees under Section 49". Clause (k) F is, of course, of a general nature. Section 49(1) says that :

"49. Provision for the sale of electricity by the Board to persons other than licensees. (1) Subject to the provisions of this Act and or regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and G conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs."

It would help if we notice sub-sections (2), (3) and (4) of Section 49 also. They read thus :

H "(2) In fixing the uniform tariffs, the Board shall have regard to all

or any or the following factors, namely - A

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and B economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies; C

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall D derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

E

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person."

In exercise of the power conferred by Section 79 read with Section 49 of the Electricity (Supply) Act, the Orissa Board has framed Regulation F 46. Before its amendment by Notification dated June 25, 1987, Regulation 46 read as follows :

"Right of Board in case of break down in Board's supply system -

If at any time during the continuance of any agreement between G the Board and consumer, due to reason mentioned in clause-40(d) and 43 above, the Board/Engineer shall be under no obligation to give supply of electrical energy as contracted during the period of such break down/force measure situation continues. Such period of discontinuance/reduced supply shall not be added to the initial H

A period of the agreement.

Provided that during such period of discontinuance/reduced supply, the consumer shall not be liable to pay the minimum charges in accordance with the agreement, but shall only pay for the actual quantity of demand and/or energy supplied to the
B consumer in lieu of the contracted demand."

The Regulation was substituted by the Notification dated June 25, 1987. The substitute Regulation reads as follows :

C "If on account of shortage of the generation of electrical energy, restrictions on power supply are imposed by the State Government under Section 22(B) of the Indian Electricity Act, 1910 or by the Board under Section 49 of the Electricity Supply Act, 1948 and all other power available under law, the Board and the Engineers shall be under no obligation to supply energy contracted for except
D in accordance with the restriction order and subject to the other provisions of the Regulation.

Provided that during the period restrictions are in force, the consumer shall not be liable to pay the minimum charges in accordance with the agreement if the restriction on supply in a
E month exceeds 150 (One Hundred Fifty) hours but shall only pay, in case of two part tariff, on the basis of actual energy consumption and the "maximum demand" as provided in the agreement and in all other cases, on the basis of actual consumption of energy."

F We are concerned in this case with the substituted Regulation 46 and hence, reference to Regulation 46 hereinafter means the amended Regulation 46 only.

Regulation 46, it is evident, is designed to meet the situation obtaining during the period an order under Section 22-B-of the Electricity Act,
G 1910 is the force. It says so specifically. The Regulation says that when such an order is in operation, the Board shall be under no obligation to supply the contracted demand/maximum demand and that it will supply energy only in accordance with the restrictions placed by such order. To this extent it states the obvious. The proviso - which is the one in question - then says
H that during the period of such restricted supply if the restriction on supply

exceeds 150 hours in a month, (a) the consumer shall not be liable to pay minimum charges in accordance with the agreement but (d) he shall pay in case of two-part tariff, on the basis of actual energy consumption and the maximum demand as provided in the agreement and (b) in all other cases, (i.e., in case of consumers to whom two-part tariff does not apply) on the basis of actual consumption of energy.

Now, in the case before us, the restriction on supply did exceed 150 hours in a month; indeed it was fifty per cent. In accordance with the said proviso, therefore, the respondent was obliged to pay (i) the maximum demand charges as provided in the agreement and (ii) the actual energy consumption charges though he is relieved of the obligation to pay minimum charges. The maximum demand contracted by the respondent is *upto but not exceeding 7778 KVA* as mentioned hereinbefore. Now, if the respondent draws energy at full load, i.e., at 7778 KVA, his consumption of energy over the year would be twice the quota permitted to him during the year of restriction. Therefore, the respondent is obliged to - and should - draw energy at half the maximum/contracted demand, i.e., at 3889 KVA, if he wants to run his factory for the whole of the year of restriction. And since, he is relived of the obligation to pay the minimum charges as per the agreement, he pays demand charges only on the basis of the actual maximum KVA drawn by him plus charges for the energy actually consumed by him. Secondly, the Board explains, there is an option available to such consumers. If their unit cannot work at a level/load less than the maximum demand/contract demand or if the consumer wishes to do so for his own reasons, he is free to draw energy at the contract/maximum demand level, but then he can work only for six months in the year of restriction since he is bound to observe the cut in consumption of energy by fifty per cent. In other words, if he avails power/energy at the maximum agreed level, he will exhaust his fifty per cent quota in six months itself. It is however open to a consumer to draw energy at any other level so long as he does not exceed the fifty per cent quota permitted to him during the year of restriction, as explained in the tabular statement referred to hereinbefore. The option to draw at the maximum level/load permitted is probably conceived to provide for those units which cannot operate except when they draw energy at the maximum demand level. They can do so but they can operate only for six months in the year of restriction. So far as the respondent is concerned, it is admitted that it is not a unit which can operate only when it draws energy at 7778 KVA or thereabout; it can operate even if energy is drawn at half

A the maximum demand level. May be, such functioning may be less economical, but function it can.

We shall now deal with the precise grievance of the respondent- writ petitioner and the grounds on which the High Court has invalidated the proviso to Regulation 46. The respondent says that where the cut in the B supply is as much as half, there is no justification or equity behind the regulation which entitles the Board to levy full demand charges. (There is no complaint insofar as the levy of actual consumption charges are concerned; the whole grievance is only about the maximum demand charges or demand charges, as they are called.) The respondent submits that during C the periods of restricted supply, there are frequent cuts and breakdowns, the supply is irregular and yet the Board proposes to levy full demand charges only because in any thirty- minute period in a given month, the power is availed at the maximum demand level. According to the respondent, during the period of such supply the demand charges should not be D collected at all but only the consumption charges. This submission has been upheld by the High Court on the following reasoning which may better be put in their own words :

> "Under the two part tariff system which is meant for big consumers of electricity, the consumer is required to pay the demand charges E which charges are levied to cover investment installation and the standing charges to some extent and energy charges for the actual amount of energy consumed. The expression "Demand charges" would mean that the charge leviable for the readiness of the supplier to meet the demand of the consumer. Where, therefore, F the supplier, namely, the State Electricity Board was not at all in a position to supply the energy as per the demand of the consumer it would be an unreasonable burden on the consumer if the supplier is permitted to raise the entire demand charges. The excessiveness of the burden on the economy of the industry as well as on the consumer would be apparent from a small illustration. G An industry needs 7000 KVA for running of its factory but because of the power restrictions issued by the State Government in exercise of power under section 22(b) of the Supply Act it cannot run the factory through out the month as that would exceed the quantum of energy which the industry could utilise. But to run its H machinery if the industry in question on the first day of the month

takes power than in the demand meter it would show 7000 KVA Thereafter even if for next twenty nine days of the month, the industry does not take any further energy still by virtue of the proviso to Regulation 46 in accordance with the agreement between the parties the consumer will be required to pay towards "demand charge" to the extent of Rs. 35 x 7000. Levy of such a charge, in our considered opinion, cannot but be held to be arbitrary, unreasonable and confiscatory in nature."

The High Court then referred to the decision of this Court in *M/s. Northern India Iron and Steel Co.* v. *The State of Haryana and Anr.*, [1976] 2 S.C.R. 677, *Maharashtra State Electricity Board* v. *Kalyan Borough Municipality*, [1968] 3 S.C.R. 137 and to the unreported decision of the Orissa High Court in *M/s. J.M. Graphite Mining & Manufacturing Company* v. *Orissa State Electricity Board & Ors.*, and observed :

"The ratio of the aforesaid case as well as the observations extracted above would apply while testing the reasonableness of the proviso to Regulation 46, namely, if the Board is ready and willing to supply but the consumer does not consume, then obviously the liability would arise as the Board remains in readiness to supply energy and non-utilisation of the energy by the consumer does not effect the liability of the Board to keep the energy set apart for consumption. But where the Board is not in a position to supply and then by virtue of virtue of Regulations like proviso to Regulation 46, levies demand charges on the basis of contract demand, it would be an unreal levy, arbitrary levy, irrational levy and as such violates the basic mandate enshrined in Article 14 of the Constitution. In course of arguments, the learned counsel for the petitioner had produced before us a calculation sheet showing the unreasonableness of levy towards demand charge in accordance with the proviso to Regulation 46 and we think it appropriate to notice the same at this stage. The contract demand of the petitioner is 7778 KVA and if there would have been no power cut in any month and the petitioner would have been running the factory through out, then in a month the petitioner would be consuming 40,32,115 K.W.H. of units of energy taking the power factor at 90 and load factor at 80%. But on account of the power restriction imposed by the State Government under Section 22(B) of the Act,

A the units of power actually consumed during the month of January, 1989 as is apparent from the bill No. 705 dated 3.2.1989 is 2,56,200 K.W.H. and in terms of quantity of demand it is 478.3 K.V.A. but on the basis of maximum demand recorded in the trivector metre it is 683 KVA and, therefore, the petitioner has been made liable to pay the demand charge at the rate of 35 per KVA, thus B amounting to Rs. 2,51,150 though for 478.3 KVA he could have been charged on proportionate reduction basis only to the extent of 17,578. The aforesaid concrete illustration exhibits the arbitrariness and irrationality of the provisions in question. On examining the proviso to Regulation 46, we have not found any nexus for the C same for which it has been introduced. If the nexus is the readiness of the supplier to supply power then how can the provision be sustained when the readiness is not there. In the aforesaid facts and circumstances, we are of the considered opinion that the proviso to Regulation 46 is unreasonable, arbitrary and unreal and D the same cannot be sustained and we accordingly quash the same."

Apart from criticizing the above reasoning, Sri Hegde, learned counsel for the Board complains that the decision of the High Court is coloured by the extreme example taken by it relating to the month of January, 1989 (Bill No. 705 dated February 3, 1989). The learned counsel explains that E during the month of January, i.e., on January 5, 1989, there was "system disturbance following failure of a 220/132 KV auto-transformer at TTPS, Talcher for which loads had to be restricted to all the sub-stations receiving power at 132 KV, from TTPS due to which M/s. IPI STEEL were not allowed to draw their furnace load during several periods in the month of F January, February and March, 1989 which extended to more than 3 days at a stretch each time" and on which account a special remission has been granted to the respondent under Board Memorandum No. Com-I-70/83, a copy of which has been placed before us. The learned counsel submits that such an unusual situation cannot be taken as the standard or as a test case for judging the validity of the provision. One must go by the generality of G the situation. Such breakdowns may occur even during periods of normal supply. Barring the special situation arising from the breakdown aforementioned, he says all the consumers including bulk and large scale consumers have been supplied energy as explained in the tabular statement referred to above. Sri Hegde relies upon Paras 18 to 24 in the decision of this Court H in *Bihar State Electricity Board, Patna & Ors.* v. *M/s. Green Rubber Industries*

& Ors., [1990] 1 S.C.C. 731 where this court justified the concept of minimum charges with reference to several decisions of High Courts. It is pointed out that this Court referred with approval to the decision of the Calcutta High Court in *Saila Bala* v. *Chairman, Darjeeling Municipality,* AIR (1936) Cal. 265 wherein it was held that "the minimum charge was not really a charge which had for its basis the consumption of electric energy. It was really based on the principle that every consumer's installation involved the licensee in certain amount of capital expenditure in plant and mains on which he was to have a reasonable return. He could get a return when the energy was actually consumed in the shape of payments of energy consumed. When no such energy was consumed by the consumer, or a very small amount was consumed in a longer period, the licensee was allowed to charge minimum charges by his license, but those minimum charges were really interest on his capital outlay incurred for the particular consumer." Learned counsel points out that this court has also quoted with approval the decision of the Madras High Court in *M.G. Natesa Chettiar* v. *Madras State Electricity Board*, [1969] 1 Mad. LJ 69, where it was held that :

> "the minimum fixed was only consideration for keeping the energy available to the consumer at his end; it was not a penalty for not consuming a stated quantity of energy but was a concession shown up to the amount fixed energy at a specified rate could be consumed free, consumption beyond only had to be paid for. The statutory basis for the terms in the agreement providing for minimum annual charge was found in Section 22 of the Act and Section 48 of the Supply Act. Section 22 deals with obligation on licensee to supply energy. The proviso to the section says :
>
> > "No person shall be entitled to demand or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he had agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."
>
> Section 48 of the Supply Act empowers the licensee to carry out

A arrangement under that Act."

The decision of the Punjab High Court in *Watkins Mayor & Co.* v. *Jullundhar Electric Supply Co.*, AIR (1955) Punj. 133, it is pointed out, was also quoted with approval by this Court wherein the High Court had taken the view that :

B

> "..... the whole scheme of the Act seems to show that the provision made in any contract for a minimum charge was really to provide for a fair return on the outlay of the licensee, and it was for this reason that the law allowed the contract of this kind to be entered
> C into. Clause XI-A of the schedule to the Act, as it then stood, provided :
>
> > "A licensee may charge a consumer a minimum charge for energy of such amount and determine in such manner as may be specified by his licence, and such minimum charge shall
> > D be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made."
>
> The court accordingly held that there was nothing illegal in the
> E insertion of the term for payment of a minimum charge in the agreement of the supply of energy and held that it had not been made out that it was an unreasonable levy."

Sri Hegde further points out that in Para 21, this Court has approved the decisions of the Allahabad and Andhra Pradesh High Courts holding
F that the requirement to pay minimum charges was one of the terms and conditions of supply and cannot be faulted. Learned counsel points out that the decision of this Court ultimately rested on the principle that the stipulation of minimum guarantee charges in the agreement cannot be held to be ultra vires the statutory provisions governing the supply and that the agreement stipulating therefor was reasonable and valid. Sri Hegde points
G out that the rationale behind the concept of minimum charges referred to in the said decision is the very rationale underlying the concept of two-part levy concerned herein and which is also incorporated in the agreement between the parties. Learned counsel emphasises that the agreement expressly recites that the respondent has read the regulations and has agreed
H to be bound by them not only as they stood on the date of the agreement

but with such modifications thereto as may be made therein in future. In such situation, he says, the respondent cannot be allowed to wriggle out of the terms of the agreement by resorting to Article 226 of the Constitution. He submits further that during the period of restricted supply, the capital charges remain the same though there may be some reduction in the running charges, that even during the period of restricted supply, loans, have to be repaid with interest, the plants, the stations, the transmission lines and all other equipment have to be maintained in good shape and depreciation etc. provided for. The staff recruited, the learned counsel submits, cannot be reduced as soon as an order under Section 22-B is made and re-employed when the restriction ceases. He submits that if the respondent had installed a generating station or unit of his own for the purpose of supplying the energy required by his steel mill, he would have been faced with the very same problems as are faced by the Board.

A B C

On the other hand, the learned counsel for the respondent-writ petitioner submits that if the Board is allowed to insist upon its pound of flesh and to enforce the agreement and Regulation 46 as it stand, it would be highly unjust and inequitable to the consumers like the respondent. They would not only suffer huge losses but would be obliged to close down, affecting the workers and the national economy. He submits that because of the irregular and uncertain supply of power by the Orissa Board, the respondent-company has become sick already and its case is now pending with B.I.F.R. He submits that when the Board is not able to supply at the agreed level, it cannot at the same time seek to recover the demand charges at the agreed rate. Being a statutory public corporation and a State within the meaning of Article 12 of the Constitution of India, it is submitted, the Board must act fairly. The learned counsel relies upon the decisions of this court in *Northern India Steel* as also the decision in *Bihar State Electricity Board and Anr.* v. *M/s. Dhanawat Rice and Oil Mills*, [1989] 1 SCC 452 beside the decision in *Maharashtra State Electricity Board* v. *Kalyan Borough Municipality*.

D E F

Northern India Steel was a case where a power cut was imposed by the State Government by making an order under Section 22-B of the Electricity Act, 1910. The appellant was an industry governed by two-part levy system. On account of the said power cut, the Board did give certain reduction in the demand charges because of its inability to supply energy as per the requirement of the appellant. The appellant, however, took the

G H

A stand that no demand charge should at all be levied when the Board was not a position to supply electric energy as per its requirement or that, at any rate, there should be a proportionate reduction of the demand charges. Before this Court, the appellant and the Board took two extreme stands: the Board saying that even if if were not in a position to supply energy according to the demand of the consumer, it is entitled to claim the full B demand charges as per clause (4) of the Tariffs and the appellant saying that in such cases, the Board cannot claim demand charges but that it is entitled only to energy charges. This Court, however, did not pronounce upon the said stand in view of the fact that clause (4) (f) of the Tariffs notified by the Board provided a solution. The said clause provided that C the consumer is entitled to a proportionate reduction of demand charges in the event of lock-out, fire or any other circumstance considered by the supplier beyond the control of the consumer. This Court was of the opinion that the disability of the Board to give full supply to the appellant-consumer because of the Government Order under Section 22-B must be treated as a circumstance disabling the consumer from consuming the electricity as D per the contract and, therefore, entitled to the benefit of clause (4)(f).

So far as the decision in *M/s. Dhanawat Rice and Oil Mills* is concerned, it does not appear to be a case where a power cut was imposed under Section 22-B. The decision entirely turned upon the language of E clauses (1), (4) and (13) of the Agreement between the parties. Clause (13) provided that where the consumer is prevented from receiving or using the electrical energy either in whole or in part due to strike, riots, fire, floods, explosions, as of God or any other cause reasonably beyond the control *or* if the Board is prevented from supplying or is unable to supply such electrical energy owing to any or all the causes mentioned above, then the F demand charge and guaranteed energy charge set out in the Schedule to the Agreement shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power; the decision of the Chief Engineer of the Board in that behalf was declared to be final. The High Court had opined that the consumer was not at all liable to pay any annual minimum guarantee charges because of the tripping, load-shedding and G power cuts. This Court, however, held that the High Court was not right in saying so. It held that in view of clause (13), the consumer is entitled to proportionate reduction only.

The decision of the Constitution Bench in *Maharashtra State* H *Electricity Board* v. *Kalyan Borough Municipality*, does not appear to be

relevant on the question at issue herein. The learned counsel for the respondent could not bring to our notice any observation in the said judgment which supports his contentions. A

Now coming back to the facts that the validity or justifiability of the order made by the Government of Orissa under Section 22-B is not questioned nor is it in issue. We must, therefore, proceed on the assumption that the cut was imposed because it was necessary to ensure equitable supply of energy to various consumers in the State. It is equally beyond dispute that an order made under Section 22-B is binding upon the Electricity Board as well as the consumers and supersedes and over-rides the agreements that may have been entered into between the Board and the consumers. According to the said order, the cut was fifty per cent and the cut was operative for one full year, called 'water year'. The respondent was, therefore, bound to utilise only fifty per cent of what is permitted under the Agreement . In other words, it must consume only half the energy which it was entitled to consume under the agreement in a month or in a year, as the case may be. Evidently, if the respondent drew energy at the maximum demand level, i.e., at the maximum contracted level, and did so far the whole of the year, it would be utilising the full quota of energy permissible to him under the agreement, which he cannot do in view of the fifty per cent cut imposed by the order under Section 22-B. The order under Section 22-B read with option given by the Board, means, according to the Board, that either the consumer draws energy at half the maximum demand level and operates for full year or draws energy at full maximum demand level and operates only for half the relevant year of restriction, as explained hereinbefore. The choice is left to the consumer to arrange his affairs in such manner as he thinks fit provided he does not go beyond the quota (restricted quota) prescribed for him. Now, Regulation 46 says that during the period an order under Section 22-B is in operation and the hours of restriction exceed 150 hour in a month, the consumer is relieved of the obligation to pay the minimum charges, i.e., the obligation to pay eighty per cent of the charges even if he avails of and consumes less power. The consumer governed by the two Part tariff is, however, obliged under the said regulation to pay "on the basis of actual energy consumption and the 'maximum demand' as provided in the agreement". Now, what does this mean in practice? If the consumer avails of energy at half the maximum demand/contract demand, he will pay demand charges only for that. In other words, if the respondent had drawn energy at 3889 KVA, he would B C D E F G H

A pay demand charges only for 3889 KVA plus the charges for the actual number of units consumed by him. Similarly, had the respondent availed of the energy at, say 3000 KVA he would have been liable to pay demand charges only on that basis plus the energy charges, and if he had availed of energy at maximum demand then he would have been liable to pay demand charges for the maximum demand availed by him plus the energy B charges - the over-all restriction being that he should have remained within the fifty per cent quota prescribed. Thus, in no event, a consumer is made to pay maximum demand charges for more than what he actually availed. As stated above, the over-all limitation is that he must have remained within the fifty per cent quota allotted to him during the year of restriction. C We are unable to see any arbitrariness or unreasonableness in the said proviso. It means and says that during such period of restricted supply, the consumer pays the energy charges for the actual consumption *plus* maximum demand charges for the maximum demand availed of by him at the rate prescribed in the agreement.

D

The High Court faulted the proviso to Regulation 46 on the ground of arbitrariness and unreasonableness. The reasoning of the High Court is this : if in a given case, an industry avails of energy at 7000 KVA on the first day of the month but does not take any energy for the remaining twenty nine days of the month, it would still be liable to pay the demand E charges for the month at the rate prescribed in the agreement, viz, 7000 KVA x Rs. 35, which is not only arbitrary and unreasonable but also confiscatory in nature. With great respect, we are unable to subscribe to this view. This would precisely be the result even in the normal times. Even when there is no power cut in force, if an industry draws energy at 7000 F KVA on the first day of the month and does not draw the energy at all on the subsequent twenty nine days, it would still be required to pay the demand charges at 7000 KVA x Rs. 35. This is because the demand charges are meant "to cover investment, installation and the standing charges to some extent", as held by this Court in *Northern India Iron and Steel*, which is precisely what we have explained hereinbefore. To say that demand G charges should not be collected if the consumer does to avail of the electricity on the remaining twenty nine days in a month in the above illustration would be to deny and disallow the very concept of and rationale behind the maximum demand charges. Of course, situation would be different, if in the above illustration, the Board does not or is unable to H provide even the restricted supply in the manner explained hereinbefore.

In such situation, the consumer would certainly be entitled to the relief in an equitable manner, just as he would have been entitled to relief in normal times. In other words, what would happen if during normal times such a thing happens? Same would be the situation during the period of cut. There is in effect no distinction between both situations except that during periods of restricted supply, the availability of energy is reduced *vis-a-vis* the contracted supply. Now it is not the case of the respondent that in any month electricity energy was available for the first day of the month or on any particular day or days and not for the whole month. So far as the period January to March, 1989 is concerned, the situation in the month was a special one. It is explained by the Board that on January 5, 1989 there was a system disturbance on account of the failure of a 220/132 KV auto -transformer at TTPS Talcher on account of which the industries like the respondent were not allowed to draw energy even in accordance with the cut and restriction imposed by the Government of Orissa and the Orissa Electricity Board. It is explained that on account of this unusual situation and on the basis of the representation of the respondent, it has been given a special rebate in Board Memorandum No. Com I-70/83. Under this memorandum, it has been decided that "some relief be provided to the consumer by exempting the demand charge for the period when power was restricted to this industry for a continuous period of seventy two or more as special case (for the months of January '89 to March '89 only). If this is approved, the monthly maximum demand charges of this unit for the three months from January, 89 to March, 89 shall be prorated for the period of supply excluding the period when power supply was not given to the consumer continuously for seventy two hours or more. This concession, if allowed, shall be a special case not to be cited as a precedent for future." It is stated by Sri Hegde, learned counsel for the Board that a special concession has been approved and given to the respondent for the said months.

The other reason given by the High Court in support of its decision is contained in the second of the two extracts from its judgment set out by us hereinbefore. It takes the January, 1989 situation as a representative situation and seeks to demonstrate on that basis the arbitrariness and irrationality of the proviso to Regulation 46. But as stated hereinbefore that was an unusual situation for which appropriate relief has been given to the respondent. The validity of regulations, which have the force of law, should not be judged by taking either a stray case or an unusual case but on the

A generality of the situation. All that happens during the period of restriction is that electricity is generated at a lower level than usual; if the fall in. production is expected to be fifty percent, a corresponding restriction is imposed on consumption. So far as breakdowns and trippings etc. are concerned, they are not confined to periods of restrictions alone; they may occur during normal times as well. If there is no supply at all for consid-
B erable periods, the situation would be different, whether it happens during the period of normal supply or during the period of restricted supply, but we are not concerned with or called upon to pronounce upon such a situation. For the unusual situation obtaining during January-March, 1989 aforesaid, appropriate relief has already been given to the respondent.

C

We must, therefore, say that no arbitrariness or unreasonableness is involved in Regulation 46 or its proviso. It only provides for collecting demand charges for the actual maximum demand availed by such consumers during the period of restricted supply. The consumer cannot
D legitimately complain of this course nor can it characterise it as confiscatory. We must also say that none of the decisions relied upon by the learned counsel for the respondent lays down any principle which can be said to suggest that such a rule is arbitrary and unreasonable. Once we understand the system of two-part levy and the rationale behind it, as also the compulsions arising from an order under Section 22-B of the Electricity
E Act, 1910, there would be no room or ground for impugning the validity of Regulation 46 of its proviso. Difficulties are no doubt there - difficulties of the consumer and difficulties of the Board. They are essentially the problems of shortages, perhaps endemic to a developing economy. As rightly emphasised by Sri Hegde, the respondent would have faced the
F same problems if he had installed his own plant for generating electricity to meet his needs. While the respondent says that it has suffered on account of these cuts, the Board says that by reducing the demand charges during such periods, it is also suffering. The consumer accuse Board of several failings and the Board has its own explanations. It is not possible
G to go into them. It is enough to say that in the circumstances, Regulation 46 or its proviso cannot be termed as arbitrary or unreasonable, much less confiscatory.

The appeal is accordingly allowed and the order of the High Court
H is set aside. There shall be no order as the costs.

Before parting with this case, we must mention that during the hearing of this appeal, M/s. Ispat Alloys Limited filed a Transfer Petition (C) No.335 of 1994 praying for transferring the writ petition filed by them in and pending before the Orissa High Court (O.J.C. No.6565 of 1992) to this Court for being heard along with this appeal on the ground that the points arising in this appeal are similar to those arising in its writ petition. We told Sri Kapil Sibal, learned counsel appearing for the petitioner that while we are not inclined to transfer the said writ petition to this Court, we may hear him as an intervenor in this appeal. We did hear him for sometime but then we found that the learned counsel was raising several issues and contentions which are outside the purview of the writ appeal and which were not put forward or argued before the High Court. We, therefore, did not permit Sri Sibal to raise those contentions. It is not necessary to set out the learned counsel's submissions nor is it necessary to express any opinion thereon. Suffice it to say that our decision is confined to the issues arising in the appeal before us and will obviously not govern the issues and questions not raised in this appeal.

Accordingly, the Transfer Petition is dismissed as unnecessary.

B.K.M Appeal allowed