

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4342-4343 OF 2010
(Arising out of S.L.P. (C) Nos.8079-8080 of 2009)

U.P. Power Corporation Limited and othersAppellants

Versus

M/s Amausi Textile Mills Limited and anotherRespondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.
2. These appeals are directed against orders dated 5.12.2008 passed by the Division Bench of Allahabad High Court in Writ Petition No.6744 (M/B) of 2008 whereby it accepted report dated 17.10.2008 submitted by Justice K.S. Rakhra (Retired), quashed orders dated 1.3.2008 and 26.3.2008 passed by the Consumer Grievance Redressal Forum, Lucknow Electricity Administration, Madhyanchal Vidyut Vitaran Nigam Limited (for short, “the Consumer Forum”) and the Electricity Ombudsman respectively and

directed appellant No.1 – U.P. Power Corporation Limited to pay Rs.1,69,261/- to the writ petitioner (respondent No.1 herein).

3. Respondent No.1 is running a spinning mill and is a consumer of electricity supplied by appellant No.1. In 1994, a notice was issued to respondent No.1 to pay the dues of electricity amounting to Rs.19,15,929.20. After paying a sum of Rs.3,02,668/-, respondent No.1 filed Writ Petition No.3503 (M/B) of 1994 with the grievance that the demand was highly inflated and the representation made against the same has not been decided. By an order dated 9.9.1994, the Division Bench of the High Court directed the Secretary of the Cooperative Electric Society Limited, Lucknow to decide the representation of respondent No.1. The concerned authority passed order dated 2.2.1995 and held that as on 31.12.1994, a sum of Rs.22,35,515.19 was payable by respondent No.1 towards the dues of electricity. However, instead of complying with order dated 2.2.1995 and with a view to avoid payment of the outstanding dues, respondent No.1 filed successive writ petitions and instituted other proceedings, the details of which are as under:

- (i) Respondent No.1 filed Writ Petition No.2619 (M/B) of 2002 with the complaint that even though the appeal filed by it against the demand created by appellant No.1 was pending, the concerned authorities were taking coercive action for recovery of the so-called

dues. The same was disposed of by the High Court on 15.5.2002 by taking cognizance of the statement made by the counsel appearing on behalf of appellant No.1 that General Manager, Lucknow Electricity Supply Authority (for short, "LESA") will decide the appeal of respondent No.1 within one month. Simultaneously, the High Court directed that further action in respect of the property, which had already been attached shall be taken only after decision of the appeal.

(ii) General Manager, LESA dismissed the appeal filed by respondent No.1 and held that the demand created by appellant No.1 was neither arbitrary nor excessive. The appellate order was challenged by respondent No.1 in Writ Petition No.2907 (M/B) of 2002 on the ground that the appeal has been decided without complying with the rule of *audi alteram partem*. By an order dated 24.5.2002, the High Court directed the competent authority to decide the appeal afresh after giving opportunity of personal hearing to respondent No.1 and restrained the appellants from taking coercive action for recovery of the outstanding dues.

(iii) Soon after disposal of the second writ petition, respondent No.1 filed another writ petition bearing No.3735 (M/B) of 2002 alleging therein that its representative had not been heard by the concerned

authority. That petition was disposed of by the High Court vide order dated 5.7.2002, the relevant portions of which are extracted below:

“Without entering into the factual position as alleged in the writ petition with all fairness, we fix 10th July, 2002 to enable the petitioner to appear before opposite party No.4 i.e. Chief General Manager, LESA, Lucknow who shall after hearing the petitioner shall decide the matter in accordance with law on that date. It is clarified that no further adjournment will be granted in the matter by the respondents.

Till the final decision is taken, no coercive method will be used against the petitioner.”

(iv) In compliance of the court’s directive, General Manager, LESA heard the representative of respondent No.1 and passed detailed order dated 10.7.2002, paragraphs 2 to 6 whereof are reproduced below:

“2. The applicant M/s. Amausi Textile Mills Ltd., in his letter dt. 16.11.80 (Annexure 4) has applied for supply of electricity billing for his Industry in continuous process. Accordingly billing from time to time is being sent to the applicant for the electricity consumption on continuous process as per existing tariff regarding which payment was also made by the applicant.

3. With regard to concession demanded by the applicant in respect of block closer it is submitted that in respect of Industry under Power cut two following types of alternatives were available under continuous process:-

- (a) If the average demand of the Electricity by way of operating under power cut from the month of July, 71 to June, 72 to the tune of 50%.
- (b) If the condition of block closer is adhered to.

The applicant instead of choosing the option of block closer (b), had chosen the option of curtailing the demand under the restricted under option (a) according to which he was getting concession admissible from time to time. Thus, the contention of the applicant that it is entitled to get concession under block closer and same should be given to him, is not proper because the applicant has not chosen said option. Therefore, the concession admissible under this option is not admissible to the applicant.

4. The real description or detail has been provided by the defendant to the applicant amounting to Rs.53,72,006.87 during the course of hearing regarding which the receipt was also admitted by the applicant.

5. It has become evident that for realizing the dismantling charges of the established line and equipment, a charge of Rs.1,36,915.00 towards labour, loading and supervision charges has been levied in accordance with the provisions for dismantling the electricity lines. So far as question of removing the electricity line and equipments physically, the said amount will remain unaffected because in the aforesaid amount the costs of electricity lines and equipments are not included.

6. By the applicant it has been prayed that the charge of surcharge mention in notice of electricity dues should be waived. In this regard this is mentioned that the defendant no.2 – Executive Engineer, Electricity Distribution Division – (CESS) Zone, LESA, Lucknow and notice for realizing the amount of Rs.53,72,006.87 which includes the amount of surcharge but it is evident that no surcharge has been levied further on the amount of surcharge. This factum is also fully evident from perusal of chart submitted by the defendant no.2 with respect to delayed surcharge.”

(v) As a sequel to dismissal of the appeal preferred by respondent No.1, the prescribed authority i.e. the Executive Engineer issued recovery certificate dated 4.10.2002 and requested the Collector (District Magistrate) to recover Rs.53,71,988.87 as arrears of land revenue.

(vi) Respondent No.1 questioned the legality of recovery certificate in Writ Petition No.6121 (M/B) of 2002, which was disposed of by the High Court on 7.10.2002. The Division Bench of the High Court noted that respondent No.1 had already filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the 1996 Act”) for appointment of an arbitrator and another application under Section 9 of that Act and stayed the recovery subject to the condition of deposit of half of the amount specified in the recovery certificate.

(vii) Respondent No.1 did not comply the direction given by the High Court and filed an application before U.P. Electricity Regulatory Commission, Lucknow (for short, “the Commission”) for appointment of an arbitrator in terms of Clause 18 of the Agreement of Supply. The Commission dismissed the application by observing that matter

relating to appointment of an arbitrator is pending before District Judge, Lucknow.

(viii) When the application filed by respondent No.1 under Section 9 of the 1996 Act was taken up for hearing, no one appeared on its behalf. Therefore, by an order dated 26.3.2004, District Judge, Lucknow dismissed the same for non-prosecution. The restoration application filed by respondent No.1 was also dismissed for non-prosecution.

(ix) In the interregnum, appellant No.1 floated One Time Settlement scheme (OTS), which envisaged waiver of late payment surcharge to the extent of 100 per cent subject to the condition of deposit of the amount due. Respondent No.1 opted for OTS but did not pay the outstanding dues except one installment of Rs.9 lacs and on that account, it could not get the benefit of clause relating to waiver of late payment surcharge.

(x) After deducting the amount of Rs.9 lacs deposited by respondent No.1, the prescribed authority issued revised recovery certificate dated 6.9.2007 and forwarded the same to the Collector (District Magistrate).

(xi) Respondent No.1 challenged the revised recovery certificate in Writ Petition No.78 (M/B) of 2008 and tried to hoodwink the High Court by withholding the material facts and documents including order dated 10.7.2002 passed by General Manager, LESA. When counsel appearing for respondent No.1 found that the High Court is likely to dismiss the writ petition on the ground that his client had not come with clean hands, he made a prayer that the writ petition may be dismissed as not pressed. The High Court accepted his request and dismissed the writ petition as not pressed but after recording detailed order dated 17.1.2008, the relevant portions of which are reproduced below:

“The petitioner who had a spinning mill fell in electricity dues amounting to Rs.19,15,929.29. In 1994 when the notice was issued for electricity dues he preferred a writ petition No.3503 (M/B) of 1994 before this Court and the writ petition was disposed of on 9.9.1994 directing the respondents to decide the representation of the petitioner expeditiously and preferably within a period of six months, a copy of which has been annexed as Annexure-1 to the short counter affidavit. In pursuance of the judgment and order dated 9.9.1994 the competent authority decided the controversy and communicated that Rs.15,19,515.19 in due against the petitioner, vide letter dated 02.02.1985. Since the petitioner failed to pay the amount to satisfy the dues, the recovery proceedings were initiated. Feeling aggrieved by the recovery proceedings, the petitioner filed a second Writ Petition No.2619 (MB) of 2002. The said writ petition was decided by the judgment and order dated 15.5.2002 directing the respondents to take further action on the property attached only after the decision in the appeal by the competent authority, a copy of the order dated 15.5.2002 has been annexed as Annexure 2 to the

short counter affidavit. When the controversy was decided again by the competent authority in appeal, the petitioner filed the third writ petition No.2907 (MB) of 2002 on the ground that no opportunity of hearing was afforded to the petitioner in appeal. Hence this court interfering in the writ petition passed the judgment and order dated 24.05.2002 directing the respondent to provide opportunity of hearing to the petitioner, a copy of which has been annexed as Annexure 3 to the writ petition. In pursuance of the judgment and order dated 24.5.2002 passed by this court the controversy was adjudicated afresh by the competent authority vide order dated 05.07.2002 calling the petitioner before the General Manager, LESA and providing opportunity of hearing to the petitioner. The General Manager, LESA decided the controversy in pursuance of the judgment and order dated 24.05.2002 (supra) of this Court afresh after giving full opportunity of hearing to the petitioner by order dated 10.07.2002 a copy of which has been annexed as Annexure No.5 to the writ petition. The order dated 10.07.2002 was never challenged by the petitioner and the same attained finality. However, the petitioner's counsel submits that the consequential citation of recovery of dues in pursuance of the order dated 10.07.2002 was challenged in this Court and the writ petition was dismissed.

Instead of making payment of dues in pursuance of the order dated 10.07.2002 even after dismissal of the writ petition, the petitioner filed another Writ Petition No.6121 (MB) of 2002 against the recovery which comes to Rs.53,72,006.87. The writ petition was disposed of vide order dated 07.10.2002 directing the petitioner to pay half of the amount to respondent No.2 within three weeks and rest of the amount in installments, a copy of the judgment and order dated 07.10.2002 has been annexed as Annexure No.6 to the writ petition. Thereafter again the controversy relating to One Time Settlement was adjudicated by the competent authority vide order dated 31.10.2003. While approaching this Court, the petitioner did not disclose any of these facts.

At this stage, learned counsel for the petitioner submitted that the petition may be dismissed as not pressed. It is accordingly dismissed being not pressed.”

(emphasis supplied)

(xii) Having successfully avoided the consequence of filing a writ petition by suppressing the material facts and withholding the relevant documents, respondent No.1 filed a complaint before the Consumer Forum, which was registered as Consumer Case No.2 of 2008 and prayed for setting aside the demand of Rs.53,71,988.87 by asserting that it had already deposited the outstanding dues vide receipt dated 5.12.1997 and that appellant No.1 was not entitled to recover late payment surcharge. The Consumer Forum referred to order dated 17.1.2008 passed in Writ Petition No.78 (M/B) of 2008 and held that appellant No.1 is entitled to recover the outstanding dues. The last four paragraphs of order dated 1.3.2008 passed by the Consumer Forum read thus:

“Heard the parties at length. The complainant has argued that his grievances has never been adjudicated on merit and he was not given opportunity at any stage.

The perusal of the Hon. High Court judgment and order dated 17.01.2008 passed in writ petition No.78 (M/B) 2008 specifically states that in pursuance of order dated 24.05.2002 passed in writ petition No.2907 (M/B) 2002, the controversy was adjudicated afresh by competent authority calling upon the complainant vide order dated 05.07.2002 and after giving full opportunity of hearing the final order was passed by competent authority on

10.07.2002 which was never challenged and got finality and the writ petition challenging the recovery proceeding in pursuance of the order dated 10.07.2002 was also rejected by the Hon. High Court. The Hon. High Court order also reveals that against the recovery demand Rs.5372006.87 the writ petition was finally disposed of on 07.10.2002 with direction to complainant to pay half of the amount to respondent No.2 within 3 weeks and rest in installment thereafter again the controversy relating to one time settlement was adjudicated by the competent authority but the complainant failed in the all the time and these facts were also not disclosed before Hon. High Court in Writ Petition No.78 (M/B) 2008 and also have not been disclosed before this Forum.

Since the complainant has adjudicated the present matter before the Hon. High Court as well as before the competent authority and the same has been adjudicated at that level by giving full opportunity to the complainant but instead of making compliance of the orders passed by the Hon. High Court the complainant preferred the present complaint to avoid from payment of the recovery of electricity dues which is not maintainable in view of principle of res-judicata and as such is liable to be dismissed.

ORDER

In view of the discussion made above the Forum is of the view that the present complaint has already adjudicated upon after giving full opportunity by the competent authority and the same is dismissed as not maintainable. As such the U.P.P.C.L. has full right to recover outstanding dues.”

(xiii) The appeal preferred by respondent No.1 was dismissed by the Electricity Ombudsman vide his order dated 26.3.2008.

(xiv) After losing battle in the High Court and other adjudicatory forums, respondent No.1 deposited Rs.15 lacs in two installments of Rs.10 lacs and Rs.5 lacs and then approached the Minister of Energy, Government of Uttar Pradesh, who directed the Managing Director of Mandhyanchal Power Corporation to attend the grievance of respondent No.1. However, the concerned office did not yield to the pressure tactics adopted by respondent No.1 through political channel and issued revised certificate dated 28.6.2008 for recovery of Rs.28,62,029/- as arrears of land revenue. As a follow up, Naib Tehsildar, Bijnor issued proclamation dated 8.7.2008 for sale of the property of the respondents.

(xv) The issuance of the revised certificate enthused the respondents to again try their luck and they filed Writ Petition No.6744 (M/B) of 2008 with the prayer that the recovery proceedings initiated by appellant No.1 and its functionaries, orders dated 1.3.2008 and 26.3.2008 passed by the Consumer Forum and the Electricity Ombudsman respectively and the sale proclamation may be quashed. They further prayed for issue of a direction to the prescribed authority to issue revised bill as per OTS scheme dated 31.10.2003 after adjusting the amount already deposited and by waiving the late payment surcharge.

(xvi) At the hearing of the writ petition, which was sixth in series, learned counsel representing respondent Nos.1 to 3 (including the appellants herein) apprised the Division Bench of the High Court about the successful/unsuccessful litigious and non-litigious adventures undertaken by the writ petitioners and submitted that their challenge to the revised recovery certificate should not be entertained. The Division Bench of the High Court did not deal with the objection to the maintainability of the writ petition, which was implicit in the submissions of the learned counsel and passed order dated 1.8.2008 by which a retired Judge of the High Court, namely, Justice K.S. Rakhra was appointed to settle the dispute between the parties, albeit by recording that this was being done with the consent of the counsel for the parties. The relevant portions of that order are extracted below:

“Sri Manoj Kumar Dwivedi, the learned counsel for the respondent nos.1 to 3, on the basis of instructions, submits that at present Rs.28,62,029/- is outstanding against the petitioners. He further submits that the petitioners have filed several writ petitions before this Hon’ble Court and he also approached the Electricity Ombudsman and Consumer Grievance Redressal Forum, Lucknow i.e. respondent nos.6 and 7. He further submits that the cheques issued by the petitioners during the period April 1997 to January 1998 were dishonoured.

We have considered the submissions made by the learned counsel for the parties.

It is admitted case of the parties that the electricity of the petitioners was disconnected permanently on 12.01.1998. According to the petitioners, they have deposited Rs.54,73,208/- with the respondent no.1 to 3 on different dates between 1997 to 2008. On the basis of instructions issued by the respondent Nos.1 to 3, Sri Dwivedi, the learned counsel for the respondent nos.1 to 3 has informed this Court that at present the outstanding against the petitioners is about Rs.28,62,029/- although in the proclamation of sale dated 08.07.2008 the outstanding is mentioned as Rs.43,63,029/-. The petitioners have alleged that they are entitled for refund of Rs.11,11,179/-. The petitioners have filed several writ petitions in this Court in the past which were finally disposed of after hearing the learned counsel for the parties.

Since the disputed question of facts are involved in this case, we, with the consent of learned counsel for the parties, appoint Mr. Justice K.S. Rakhra (Retired) Judge of this Court to settle the dispute between the parties. The petitioners and the respondent nos.1 to 3 shall file their claims at the residence of Justice K.S. Rakhra (Retired) on 12.08.2008, who after affording opportunity to both the parties will decide the dispute and submit the report preferably within two months before this Court.”

(emphasis supplied)

(xvii) The parties filed their respective claims before Justice K.S. Rakhra (Retd.). In the statement filed on behalf of the appellants, it was pleaded that the respondents are not entitled to any relief because order dated 10.7.2002 passed by General Manager, LESA had become final and Writ Petition No.78 (M/B) of 2008 filed against revised recovery certificate dated 6.9.2007 was dismissed as not pressed. It

was also pleaded that the respondents cannot take benefit of the OTS because they failed to comply with the conditions enshrined therein.

(xviii) Justice K.S. Rakhra (Retd.) did not pay due attention to the statement filed on behalf of the appellants and submitted report dated 17.10.2008 with the following conclusions:

“On the basis of the discussions made above, it is concluded that the UPPCL had not correctly calculated the late payment surcharge which in fact could be calculated as Rs.28,37,609/-. They committed an error in fixing the said amount of late payment surcharge at 35% of the total bill amount and giving waiver of only sum of Rs.18,73,474/-. IN the split up figures of LPS in the Bill amount of Rs.53,72,006/- they have also made a futile attempt to show as if the waiver was 100% of the late payment surcharge amount because, this total LPS too, has been shown to be Rs.18,73,474/-.

It is further concluded that the bill raised by UPPCL after first OTS, was clearly incorrect bill for Rs.34,98,532.26 P. Instead, it should have been for Rs.23,41,739/-. The petitioners paid first instalment of Rs.9,00,000.00 under protest. Their application for OTS was entertained even second time. They were, therefore, not at fault in withholding further payment till the correct bill was raised.

The dismantling charges of Rs.1,36,915/- have been wrongly claimed instead of Rs.400/- which were standard charges.”

(xix) In his report, the learned retired Judge relied upon the statement made by Shri Akhilesh Srivastava, Executive Engineer of appellant

No.1 that respondent No.1 was allowed to pay the amount in nine installments out of which six had already been paid and concluded that only Rs.5,07,677.03 was payable against the demand of Rs.14,14,037.03 which remained to be paid after adjustment of the amount paid towards the bills of May to October, 1997. The learned retired Judge held that respondent No.1 was entitled to 100% waiver of late payment surcharge. He further held that appellant No.1 is not entitled to levy dismantling charges and interest and concluded that as against the outstanding dues of Rs.23,41,739/-, respondent No.1 had already paid Rs.25,11,000/-.

(xx) The appellants filed detailed objections against the report of Justice K.S. Rakhra (Retd.). They pointed out that the cheques given by respondent No.1 towards five out of nine installments had been dishonoured and despite being asked, it did not produce the bank statement. The appellants also alleged that the respondents had manipulated bill dated 1.12.1997. As regards the OTS, the appellants pointed out that benefit thereof could be availed only if the amount was paid by 31.10.2003, which the respondents failed to do. It was also pointed out that cheque of Rs.9 lacs given by respondent No.1 on 30.11.2003 was dishonoured by the bank on 9.12.2003 and later on, payment was made through fresh cheque. According to the

appellants, the respondents did not pay the remaining installments and, therefore, they were not entitled to waiver of the late payment surcharge in terms of the OTS. On the issue of levy of dismantling charges, the appellants pointed out that the demand was made strictly as per the order of the Board and Rs.400 were payable only by those consumers who were getting supply from the sub station.

(xxi) The High Court summarily brushed aside the objections filed by the appellants and allowed the writ petition by relying upon the report of Justice K.S. Rakhra (Retd.) as if the determination made by him was final.

4. Shri T.N. Singh, learned counsel for the appellants submitted that the impugned orders are liable to be set aside because the Division Bench of the High Court failed to appreciate that the respondents had not challenged the determination made by General Manager, LESA vide order dated 10.7.2002 and the fact that Writ Petition No.78 (M/B) of 2008 filed by respondent No.1 was dismissed as not pressed. Learned counsel argued that the Division Bench of the High Court was not at all justified in undertaking an exercise for re-determination of the liability of the respondents to pay the dues of electricity ignoring that their challenge to the recovery certificates issued earlier had failed and they did not pay a single farthing in compliance

of order dated 7.10.2002 passed in Writ Petition No.6121 (M/B) of 2002 and also failed to honour the commitment made to pay the dues in terms of the OTS. Learned counsel also assailed the report of Shri Justice K.S. Rakhra (Retd.) and argued that the learned Judge totally exceeded his brief when he held that the respondents are entitled to refund of Rs.1,69,261/-.

5. Learned counsel for the respondents did not dispute that order dated 10.7.2002 passed by General Manager, LESA was not challenged by his clients and that Writ Petition No.78 (M/B) of 2008 filed by them was dismissed as not pressed but argued that after having agreed to the appointment of a retired Judge to settle the dispute between the parties, the appellants are estopped from questioning the findings contained in the report of Justice K.S. Rakhra (Retd.). In the written submissions filed on behalf of the respondents, it has been claimed that the petitioners are not entitled to challenge the report of Justice K.S. Rakhra (Retd.) because he was appointed with the consent of the counsel for the parties. It has been further claimed that demand of late payment surcharge was totally unjustified and in any case, the appellants are not entitled to realize the amount specified in order dated 10.7.2002 passed by General Manager, LESA because details of the outstanding dues were never furnished to the respondents. The respondents have also justified the findings recorded in the report of Justice K.S. Rakhra (Retd.) by contending that the appellants cannot claim dismantling charges

and interest on late payment surcharge because the respondents were allowed to pay the due amount in installments and all the dues had been cleared.

6. We have thoughtfully considered the submissions of the learned counsel. In our view, the writ petition filed by the respondents for setting aside orders dated 1.3.2008 and 26.3.2008 passed by the Consumer Forum and the Electricity Ombudsman as also the sale proclamation was nothing but was an abuse of the process of the court and the High Court committed serious error by entertaining and allowing the same. It is not in dispute that in none of the writ petitions filed by them, respondent No.1/respondents challenged order dated 10.7.2002 passed by General Manager, LESA, who held that respondent No.1 was liable to pay the dues amounting to Rs.53,72,006.87. Therefore, the consequential action taken by the prescribed authority to issue recovery certificate/revised recovery certificate was not open to be challenged by the respondents and in any case, order dated 10.7.2002 could not have been indirectly nullified by the High Court by allowing the writ petition filed for quashing orders dated 1.3.2008 and 26.3.2008 passed by the Consumer Forum and the Electricity Ombudsman. Unfortunately, the Division Bench of the High Court not only failed to notice this designed omission on the respondents' part to challenge order dated 10.7.2002 passed by General Manager, LESA but also ignored the

starking facts that respondent No.1 failed to comply with order dated 7.10.2002 passed in Writ Petition No.6121 (M/B) of 2002 and that Writ Petition No.78 (M/B) of 2008 filed by it for quashing the revised recovery certificate dated 6.9.2007 was dismissed as not pressed. It is extremely difficult, if not impossible to fathom any reasons why the High Court appointed Justice K.S. Rakhra (Retd.) for settlement of dispute between the parties, the determination of which, in its own opinion involved investigation into disputed questions of fact. It seems to us that the Division Bench was very much conscious of the limitations of High Court's jurisdiction under Article 226 of the Constitution and, therefore, it evolved a novel method for granting relief to the respondents. We disapprove the mechanism adopted by the High Court for disposing of the writ petition filed by the respondents by relying upon the report of the retired Judge, who recorded findings in derogation of order dated 10.7.2002 passed by General Manager, LESA and completely overlooked the factum of dismissal of Writ Petition No.78 (M/B) of 2008 filed by respondent No.1 against the revised recovery certificate dated 6.9.2007.

7. Although, the sixth writ petition filed by the respondents cannot be treated as barred by *res judicata* because in the previous writ petitions, they did not have the occasion to challenge orders dated 1.3.2008 and 26.3.2008 passed by the Consumer Forum and the Electricity Ombudsman and the sale

proclamation, while passing the impugned orders, the High Court was duty bound to take note of conduct of respondent No.1 which had instituted five writ petitions and other proceedings with the sole object of avoiding its liability to pay the dues of electricity. The High Court should also have taken note of the fact that respondent No.1 did not abide by the terms of the OTS and declined to entertain the prayer made by the respondents.

8. Dehors what has been observed in the preceding paragraphs, we are convinced that the impugned orders are liable to be set aside because the High Court has not assigned any reason for quashing orders dated 1.3.2008 and 26.3.2008 and the sale proclamation. The Division Bench of the High Court did not find any legal infirmity in the decisions taken by the Consumer Forum and the Electricity Ombudsman not to entertain the respondents' prayer for nullifying the demand raised by appellant No.1 and yet it quashed the two orders by simply reproducing and relying upon the report of Justice K.S. Rakhra (Retd.), which was prepared by distorting the facts and with the sole purpose of espousing the cause of the respondents.

9. In the result, the appeals are allowed. The impugned orders are set aside and the writ petition filed by the respondents before the High Court is dismissed. Within one month from today, the appellants shall supply to the respondents a statement containing the details of the outstanding dues. The statement shall also

incorporate the amounts already paid by and on behalf of respondent No.1. Within six months of the receipt of the statement, the respondents shall pay the outstanding dues in six equated monthly installments. The first installment shall be paid by the end of June, 2010 and the remaining installments shall be paid on or before 31st July, 31st August, 30th September, 31st October and 30th November of 2010. If the respondents omit to pay either of the installments, the appellants shall become entitled to recover the entire balance amount along with interest at the rate of 12% per annum.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
May 07, 2010.