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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10764 OF 2011

Maharashtra State Electricity
Distribution Company Limited
through its Superintending Engineer
O & M Circle
Sindhudurg Kudal.

.... Petitioner

- Versus -

1. The Electricity Ombudsman
606, Keshava
Bandra Kurla Complex
Bandra (E), Mumbai-400 051.

2. Sub-Divisional Officer
B.S.N.L. Deogad
Sindhudurg – 416613.

.... Respondents

WITH

WRIT PETITION NO.6783 OF 2009

Maharashtra State Electricity
Distribution Company Ltd.,
Pune Rural Circle, Pune,
Administrative Building,
2nd Floor, Block No.301,
Rasta Peth, Pune – 11.

.... Petitioner

- Versus -

1. Venco Research And Breeding
Farms Pvt. Ltd., Village Rule,

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Tal. Velha, Pune Panseth Road,
Post Girinagar, Pune – 411 025.

2. The Electricity Ombudsman,
606, KESHAVA, Bandra-Kurla
Complex, Bandra (E),
Mumbai – 400 051.

.... Respondents

WITH

WRIT PETITION NO.495 OF 2015

M/s Intox Pvt. Ltd.,
a Company registered under the
Companies Act, 1956, having its
registered office at Gat No.375,
Uravade, Tal: Mulshi,
Dist: Pune – 412 108 through its
Director & CEO, Dr. Prabhakar
Yeshawant Naik.

.... Petitioner

- Versus -

1. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Pune Rural Circle, Administrative
Building, 2nd Floor, Block No.301,
Rasta Peth, Pune 411 011.

2. The Maharashtra Electricity
Regulatory Commission,
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade, Colaba,
Mumbai – 400 005.

3. State of Maharashtra

.... Respondents

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WITH
WRIT PETITION NO.4573 OF 2016

Ultra Tech Cement Limited,
Navi Mumbai Cement Unit,
Plot No.53-55 & 61-64, Sector 1,
Dronagiri Industrial Area,
Post JNPT, Nava Seva,
Navi Mumbai – 400 707,
through its General Manager
Shri M.B. Prabhu

.... Petitioner

- Versus -

1. Maharashtra State Electricity
Distribution Co. Ltd. (MSEDCL)
through its Superintending
Engineer, MSEDCL, Vashi Circle,
Off. Plot No.5, Nr. Abhudaya
Bank Building, Sector 17,
Vashi, Navi Mumbai.
2. The Chief Engineer (Commercial)
MSEDCL, Bandra, Mumbai.
3. The Add. Executive Engineer,
Uran Sub-Division, Uran, Tal. Panvel,
District – Raigad.

4. The State of Maharashtra

.... Respondents

WITH
WRIT PETITION NO.5367 OF 2016

1. Bulk Cement Corporation (India)
Limited, Plot No.W-7, Sector-KWC,

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Kalamboli, Raigad, Navi Mumbai
- 410 218, Maharashtra.

2. Jitendra Kumar of Mumbai,
Indian Inhabitant, Senior General
Manager of Petitioner No.1, having
his office at Plot No.W-7, Sector-KWC,
Kalamboli, Raigad, Navi Mumbai
- 410 218, Maharashtra.

.... Petitioners

- Versus -

1. The Maharashtra State Electricity
Distribution Company Limited,
having its registered office at
Prakashgad, Bandra (East),
Mumbai – 400 051.
2. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
having his office at Plot No.5,
Abhyudaya Bank Bldg., Sector 17,
Vashi, Navi Mumbai.

.... Respondents

WITH

WRIT PETITION NO.9858 OF 2016

Ambuja Cements Limited,
Moha Village, Near Ulwa Reti Bunder,
Post: Ulwa, Taluka: Panvel,
District-Raigad 410306, Maharashtra.

.... Petitioner

- Versus -

1. The Maharashtra State Electricity
Distribution Company Limited,

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O & M Circle, Vashi, 'Vidyut',
1st Floor, Plot No.5, Near Abhudaya
Bank Building, Sector 17, Vashi,
Navi Mumbai.

2. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
having his office at Plot No.5,
Abhyudaya Bank Building,
Sector 17, Vashi, Navi Mumbai.

.... Respondents

Mr. A.A. Kumbhakoni, Advocate General with
Mr. Rahul Sinha & Mr. S.B. Lolge i/by DSK Legal for
the Petitioner in WP-10764/2011 **And** for Respondent
No.1 in WP-4573/2016, **And** for the Respondents in WP-
Nos.5367 & 9858 of 2016.

Mr. Abhay Nevagi with Mr. Sandesh Shukla, Mr. Amit
Singh & Mr. Santosh Sawant i/by Abhay Nevagi &
Associates for the Petitioner in WP-495/2015.

Mr. R.S. Apte, Senior Advocate i/by Mr. Padmanabh D. Pise
for the Petitioner in WP-4573/2016.

Mr. Rahul Narichania, Senior Advocate with
Mr. Nidhish Mehrotra, Mr. Darshan Furia & Ms Zoya
Syed i/by Mr. Ashish Mehta for the Petitioner/s in
WP-Nos.5367 & 9858 of 2016.

Ms Neeta Masurkar with Mr. S.G. Thakur & Ms Nieyaati
Masurkar for Respondent No.2 in WP-10764/2011.

Mr. Gautam Ankhad with Mr. Ankur Shah i/by Mr.
Hemant Sethi for Respondent No.1 in WP-6783/2009.

Ms Shruti D. Vyas, "B" Panel Counsel for the State in
all matters.

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AND
ORIGINAL SIDE
WRIT PETITION NO.498 OF 2009

The Municipal Corporation of Greater
Mumbai, through the General Manager,
Brihanmumbai Electric & Transport
Undertaking having its Head Office
at BEST House, BEST Marg,
Mumbai – 400 001.

.... Petitioner

- Versus -

1. Beach Tower Condominium,
a body registered under the provisions
of Sec.2 of the Maharashtra Apartments
Ownership Flats Act, 1971, having
their registered office at P. Balu Marg,
Prabhadevi, Mumbai – 25.

2. The Electricity Ombudsman,
appointed by the Maharashtra
Electricity Regulatory Commission,
under Section 42(5) of the
Electricity Act, 2003, having
its office at 606, 'KESHAVA',
Bandra Kurla Complex,
Bandra (East), Mumbai-400 051.

.... Respondents

Ms Kavita Anchan with Mr. Arsh Mishra i/by M/s. M.V.
Kini & Co. for the Petitioner.

Mr. Abhishek Khare with Ms P. Kedia & Ms Bindu Bhatia
i/by Khare Legal Chambers for Respondent No.1.

AND

ORIGINAL SIDE
WRIT PETITION NO.1850 OF 2013

1. Brihan Mumbai Electric Supply and Transport Undertaking through its General Manager, having office at BEST Bhavan, BEST Marg, Mumbai – 400 001.

2. Ravindra Shivram Kale,
Aged 53 years, Divisional Engineer of Energy Audit Dept., Electric Supply Division, 4th Floor, Tardeo Bus Station Sankool, R.S. Nimkar Marg, Mumbai – 400 008.

.... Petitioners

- Versus -

1. Maker Tower E and F premises Co-op. Soc. Ltd., Ground to Top Floor, Maker Tower Pump Room, Bldg. No.85, G.D. Somani Marg, Cuffe Parade, Colaba, Mumbai – 400 005.

2. The Electricity Ombudsman, Mumbai, established by Maharashtra Electricity Regulatory Commission, under Section 42(6) of the Electricity Act, 2003, having its office at 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

.... Respondents

Ms Kavita Anchan with Mr. Arsh Mishra i/by M.V. Kini & Co. for the Petitioners.

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Mr. Shyam Mehta, Senior Advocate with Mr. Arijit Maitra i/by Mr. Madhusudan G. Gawde for Respondent No.1.

CORAM: S.C. DHARMADHIKARI,
A.M. BADAR &
SMT. BHARATI H. DANGRE, JJ.

RESERVED ON: OCTOBER 31, 2018

PRONOUNCED ON: MARCH 12, 2019

JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Civil Writ Petition No.10764 of 2011 was placed before a Learned Single Judge of this Court on 24-1-2012. He made the following order:-

“1 Heard Ms. Raksha Gala, for the Petitioner.

2 On 17th January,2012, following order was passed:-

“1 Heard Ms. Gala, Advocate for Petitioner.

2 The impugned bill seeking difference of electricity charges levied on the basis of multiplying factor one instead of multiplying factor of 2 was issued in the month of December 2010 for the period of September, 2003 to December, 2010. Prima facie Sub-Section 2 of Section 56 of the Indian Electricity Act, 2003 will not empower the Petitioner to recover any amount for period of 2 years prior to the date

of demand namely prior to December, 2008. The learned Advocate for the Petitioner has relied upon the Judgment of Division Bench (Ranjana Desai and A.A. Sayed, JJ) in the case of Rototex Polyester & anr. v/s. Administrator, Administration of Dadra and Nagar Havli (U.T.) Electricity Department, Silvassa & Ors. 2010 (4) BCR 456.

The Electricity Ombudsman relied upon the following Judgments of the High Court.

(a) Judgment of the Division Bench in W.P. (L) No.221 of 2006 Mr. Awadesh S. Pande (of M/s. Nand/A/15) v/s. Tata Power Co. Ltd.

(b) M.S.E.D.C.L. v/s. Green World Magnum Enterprises (WP No.2894/2007 decided on 7/9/2007).

(c) M.S.E.D.C.L v/s. Venco Research & Breeding Farm Pvt. Ltd. (W.P. No.6783/2009 decided on 5/3/2010).

The learned Advocate for the Petitioner seeks time of one week to produce the aforesaid 3 Judgments referred at Serial Nos.(a) to(c) above. Stand over to 24th January, 2012. Parr-heard. High on board.”

3 *Advocate Ms. Gala has brought to my notice the relevant Judgments. She has also brought to my notice that the Judgment of the Division Bench in the case of Rototex Polyester & Another was brought to the notice of the authorities of the Electricity Ombudsmen. However, the same has not been referred in the impugned Judgment.*

4 **RULE.** *Since prima facie, in my opinion the impugned order of the Electricity Ombudsman is in accordance with the provisions of Sub-Section 2 of Section 56 of the Electricity Act, 2003 and since the Respondent is*

also a public sector undertaking namely B.S.N.L., I do not think that this is a fit case for granting interim relief as prayed for in the Petition. Hence, prayer for interim relief is refused. The Writ Petition is, however, admitted in view of the importance of the issue regarding correct interpretation of Sub-Section 2 of Section 56 of the Electricity Act, 2003 and the direct conflict of opinion between the Judgments of two Division Benches of this Court as elaborately stated by me herein after.

5 On a careful perusal of various Judgments brought before me, it is clear that there is a clear conflict between two Judgments of this Court. On the interpretation of Section 56(2) of the Indian Electricity Act, 2003, in the present case, it is the case of the Petitioner that instead of applying correct multiplier factor 2, wrong multiplier factor 1 was applied. According to the Petitioner, therefore, a wrong bill for a lesser amount was issued. Hence, by the impugned bill seeking recovery of the difference, which bill is issued in the month of December, 2010, Petitioner sought recovery of the difference for the period from September, 2003 to December, 2010. In so far as period preceding two years of December, 2010 is concerned, in my opinion, there is no difficulty in the way of the Petitioner since even Sub-Section 2 of Section 56 does not bar such recovery. However, in my opinion, the problem and dispute arises when the Distribution Licensee like Petitioner seeks to recover Electricity charges and dues beyond a period of two years. In a case where such dues have not been continuously shown as recoverable as arrears of charges for electricity supplied, Section 56(2) bars the recovery. The Division Bench of this Court (Coram: Smt. R. P. Desai and A.A. Sayed JJ.) which has decided *Rototex Polyester and another v/s. Administrator, Administration and others* [2010 (4) BCR 456], was considering the case where demand notice was issued on 3rd October, 2007 claiming difference in the charges from July 2003 to July 2007. In that Judgment of the Division Bench, this Court followed the earlier Judgment of the Division Bench, this Court in the case of *Bharat Barrel & Drums Manufacturing Company Pvt. Ltd. v/s. The*

Municipal Corporation for Greater Bombay [AIR 1978 Bombay 369].

6 Section 56 (2) of the Electricity Act, 2003 reads thus:-

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

7 The Electricity Ombudsmen has relied upon the Judgment of the Division Bench of this Court in the case of Mr. Awadhesh S. Pandey v/s. Tata Power Company Ltd. & Others (Coram: F. I. Rebello and Anoop V. Mohta, JJ.) [AIR 2007 Bombay 52],. Para 7 of the said Judgment reads thus:-

“Para-7:- We then come to the next issue as to whether the demand made by respondent No.1 is contrary to the provision of Section 56 of the Electricity Act. We have, already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006, held that the respondent No.1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January 2004 became first due in February, 2004 as supplementary bill was raised

in 2006 and these dues having been within two years are recoverable under the provisions of Section 56(2) of the Electricity Act.

*

Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No.1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for non-payment of those dues. In other words, what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on sub-section (2), it was strongly urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore, the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the fact of the record and consequently there is no merit in this petition.”

8 *On the other hand as stated above, Advocate for the Petitioner relied on the observation in the Judgment of Division Bench in the case of Rototex (supra). The relevant*

paragraphs 12 to 18 reads thus:-

Para-12:- *Bharat Barrel & Drum Manufacturing Company Private Limited v. The Municipal Corporation for Greater Bombay MANU/MH/0057/1978: AIR 1978 Bom.369, a Division Bench of this Court was concerned with a situation where additional amounts for eleven years period were claimed from the consumer on the basis of failure to multiply the reading by 2 (two) and not on the basis of faulty meter. The question was whether the licensee had to restrict its claim to six months. The Division Bench observed that under Section 26 of the Indian Electricity Act, 1910 restriction as to six months does not seem to apply to a claim made by the licensee on the ground that there was a failure to multiply the reading by the changed multiplication factor.*

Para-13:- *In U.A. Thadanis case (supra), learned Single Judge of this Court was concerned with similar fact situation. Two bills were raised on the consumer demanding additional amounts because multiplying factor was wrongly charged. It was argued by the consumer on the basis of Sub-section (6) of Section 26 that the Electrical Inspector could determine the quantum of electricity during the statutory period of six months and for the period anterior to it the reading registered in the disputed meter will have to be presumed to be correct. Relying on the judgment of this Court in Bharat Barrel, learned Single Judge held that the restriction as to six months period provided in Section 26 has no application to a demand made by the licensee or the Electricity Board for the unpaid amount for the electricity consumed if the consumer was under-billed due to clerical mistakes or human error or such like mistakes.*

Para-14:- *The principle which can be deduced from the above judgments is that in case the consumer is*

under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26(6) of the Indian Electrical Act, 1910 is not in pari materia with Section 56(2) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence, the challenge raised by the petitioners must fail.

Para-15:- *The question raised in this petition can be examined from yet another angle keeping Section 56(2) of the Electricity Act, 2003 with which we are concerned here in the forefront.*

Para-16:- *In Yatish Sharmas case tariff was changed from GP1 to GP2. Between 19/1/2000 and 27/5/2000, the readings of the electronic meter were not taken. A supplementary bill was raised by the petitioner Corporation therein on the basis of the average monthly consumption. By the supplementary bill, a demand of Rs.78,187.17 was raised on the consumer and debited to the amount of the bill for the month of April, 2004. The consumer raised a grievance before the Consumer Grievance Redressal Forum. The matter ultimately reached the Ombudsman. He held that the supplementary bill was raised after a period of four years from the date when it became first due and, hence, the amount was recoverable under Section 56(2) of the Electricity Act, 2003. The Ombudsman order was challenged in this Court.*

Para-17:- *The issue which arose before learned Single Judge was what interpretation should be placed on the words when such sum becomes first due. The question was whether the Ombudsman view that since the arrears for consumption became*

due immediately upon the usage of energy, the supplementary bill raised in August, 2004 for the disputed period between January, 2000 to May, 2000 was barred under Section 56(2).

Para-18:- *While dealing with this submission, learned Single Judge referred to Delhi High Courts judgment in H.D. Shourie v. Municipal Corporation of Delhi MANU/DE/0356/1987: AIR 1987 Delhi 219, where the Delhi High Court was considering the expression due appearing in Section 24 of the Electricity Act, 2003. The Delhi High Court observed that if the word due is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to be issued under Section 24, which could not have been the intention of the legislature. The Delhi High Court observed that the word due in this context would mean due and payable after a valid bill has been sent to the consumer. Learned Single Judge followed this view and set aside the Ombudsmans order which had taken a contrary view. We are in respectful agreement with learned Single Judge. In this case, the demand notice with revised bill dated 3/10/2007 was, according to the petitioners, served on them on 9/11/2007. Therefore, the revised bill amount first became due on 9/11/2007. Hence, Section 56(2) of the Electricity Act 2003 would not come in the way of the respondents from recovering the said amount under the revised bills. The impugned order dated 12/9/2008 warrants no interference.”*

It is clear that the earlier Judgment of the Division Bench in the case of Mr. Awadesh Pandey (supra) was not brought to the notice of the Division Bench which subsequently decided the case of Rototex (supra).

9 According to me there is a direct conflict between the observation made in paragraph 7 of the Judgment of the Division Bench in the case of Mr. Awadesh Pandey (supra) and paragraphs 14 and 17 of the Judgment in Rototex (supra). This conflict will have to be resolved by a Larger Bench, since the similar issue regarding interpretation of Section 56 (2) is arising in several matters coming before this Court.

10 Before making order of reference, I deem it necessary to indicate reasons for making reference, I am unable to agree with the view taken by the Division Bench in the case of Rototex (supra) as also the Judgment of the Learned Single Judge in the case of Yatish Sharma. Even if the argument of the Petitioner is accepted, then even in the case where the Petitioner has committed an error in applying multiplier factor, the Petitioner can wake up after several years, without there being any limitation on the period within which said error can be noticed as is contended by the Petitioner. For example, a consumer may be charged only by applying multiplier factor '1', instead of '2'. On this basis, bills will be raised by the Distribution Licensee and consumer in good faith and being un-aware of the mistake made by the Licensee, will go on paying amount of the Electricity charges and on that basis, the consumer may fix the sale price of its goods in case it is a manufacturing activity or commercial activity and accordingly, charge its normal customer for the goods or the services provided to the said consumer. If the Distribution Licensee is allowed to wake up after several years and serve bill for a differential amount and thereafter, argues that the amount became due only after service of such bill for a differential amount, in my opinion, then this will not only be contrary to the legislative intent under Section 56(2) of the Electricity Act, 2003 but it will also result in the situation where an innocent consumer may be suddenly faced with a huge demand in respect of the bill even beyond two years of service of bills and will be forced to pay the same without any corresponding mechanism for recovery of charges of difference of the said amount from his customer or

consumer to whom said consumer of electricity may have provided goods or service. This will be clearly unjust and arbitrary. In my opinion, interpretation of Section 56(2) done by the Division Bench in the case of Rototex Polyester (supra) results in a situation where the Distribution License can wake up and issue a supplementary bill after any number of years without there being any limitation on the numbers of years after which said supplementary bill is issued and can thereafter, claim that the amount becomes dues from the date on which it is sought to have been levied and demanded by presenting a bill by claiming that the amount becomes due only when the supplementary bill is issued. Such interpretation will lead to absurd results.

11 Therefore, both on account of the fact that I am unable to agree with the view taken by the Division Bench in the case of Rototex Polyester (supra) and particularly, the observations made in paragraphs 14 and 18 of the said Judgment and also on account of the fact that according to me, there is a direct conflict of opinion between the earlier Judgment of the Division Bench in the case of Awadesh S. Pandey (supra) and the subsequent Judgment of the Division Bench in the case of Rototex Polyester (supra), I deem it fit that the issue will have to be referred to the Larger Bench of this Court, consisting of atleast 3 Judges.

12 Hence, I deem it necessary to request the Hon'ble the Chief Justice to refer the following issues to the Larger Bench consisting of atleast 3 Judges. The issues to be referred is as under:-

(i) Whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges;

(ii) Whether the charges for electricity

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consumed become due only after a demand bill issued by the Distribution Licensee and whether the Distribution Licensee can issue a demand bill even for the period preceeding more than two years from the date of issuance of demand bill notwithstanding the provision of Sub-Section 2 of Section 56 of the Electricity Act, 2003;

(iii) Which of the Judgments of the Division Bench namely Awadesh S. Pandey v/s. Tata Power Co. Ltd., reported in AIR 2007 Bombay 52 or the Judgment of the Division Bench in the case of Rototex Polyester & Another, reported in 2010(4) have correctly interpreted the provisions of Section 56(2) of the Electricity Act.

13 The Registrar (Judicial) is directed to take further follow up action.”

2. From a reading of the above order, it appears that the Learned Judge was of the opinion that there are conflicting views of this Court in the Judgments delivered by the two Division Benches. It is in these circumstances that the Larger Bench was constituted and a reference has been made.

3. Further, on 9-7-2014 a Division Bench was pleased to pass the following order in Civil Writ Petition No.6783 of 2009:-

“1. Not on Board. Taken on Board.

2. This petition was disposed of by the learned Single Judge of this Court on 5th March, 2010. The petitioner challenged the order of the learned Single Judge by filing an Appeal before the Apex Court. By the judgment and order dated 19th February, 2014, the Appeal was disposed of. The writ petition has been remanded to this Court. Paragraphs 7 to 9 of the order of the Apex Court read thus:

“7. It is not necessary for us to decide the issue involved in the facts of the present case. We find that the High Court in the impugned judgment has referred to its earlier Division Bench judgment in *Awadesh S. Pandey vs. Tata Power Co. Ltd* AIR 2007 Bombay 52. However, Mr Altaf Ahmed, the learned senior counsel appearing for the appellant drew our attention to another Division Bench judgment in the case of *M/s Rototex Polyester & Anr vs. Administrator, Administration of Dadra & Nagar Haveli (UT) Electricity Department, Silvasa & Ors, 2009 (5) ALL MR 579*, and argued that diametric opposite view is taken therein, which is in favour of the appellant. In a matter like this, when there are two conflicting judgments of the coordinate Benches of the same High Court, the Bench which decided the Writ Petition in question, should have referred the matter to the larger Bench.

8. Mr. Deepak Bhattacharya, the learned counsel for the respondent was candid in accepting the aforesaid legal position.

9. In the circumstances, it is desirable that the Division Bench of the High Court may reconsider the whole case and it must refer the same to the larger Bench. As the matters are pending since long we request the High Court to decide these matters expeditiously preferably within a period of six months.

(Underlines Added)”

3. *Our attention is invited to the order dated 24th January, 2012 passed by the learned Single Judge of this Court in Writ Petition No.10764 of 2011. The learned Single Judge has observed that the three questions which are framed by him deserve to be considered by a Larger Bench consisting of at least three Judges. There is no dispute that the same issue is involved in the present petition.*

4. *Considering the directions of the Apex Court and especially paragraphs 7 to 9 thereof and considering the order dated 24th January, 2012 passed by this Court in Writ Petition No.10764 of 2011, we direct the Registrar (Judicial-I) to place this petition along with the order of the Apex Court as well as the Writ Petition No.10764 of 2011 before the Hon'ble Chief Justice on the Administrative Side to enable the Hon'ble Chief Justice to pass an appropriate order."*

Pertinently, these two petitions are filed by Maharashtra State Electricity Distribution Company Limited.

4. The order of the Learned Single Judge referred three issues formulated by him.

5. However, a request was made to recast these issues. On that as well we find the parties are not *ad idem*. We would, therefore, prefer to rely on the issues formulated by the Learned Single Judge.

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6. Civil Writ Petition No.10764 of 2011, in which the order was made, came to be filed in the following factual background.

7. The petitioner is the Maharashtra State Electricity Distribution Company Limited (“MSEDCL” for short), constituted pursuant to an order dated 6-6-2005 which divided the Maharashtra State Electricity Board into the Generating and Distribution companies.

8. The second respondent to that writ petition is a consumer using the industrial connection of Three Phase since 9-9-2003.

9. The first respondent to this petition is an Authority constituted under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. The petitioner/MSEDCL does not dispute that the second respondent-consumer has been paying electricity bills regularly. However, in the month of December, 2010, upon checking the

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meter installed at the premises of the second respondent-consumer, it was noticed that there were errors in the multiplying factor. The petitioner issued a monthly bill dated 8-2-2011 for Rs.17,91,410/-. Thereafter, on 10-5-2011 a letter enclosing a final bill for the differential amount of Rs.28,37,845.25, after deducting the amount already paid, was raised for the period September, 2003 to December, 2010. That is stated to be the said bill. It was said to be the final bill and the manual bill raised after this final bill is irrelevant and should be ignored.

10. Being aggrieved and dissatisfied with this bill, an application was filed before the first respondent-Forum. There, reliance was placed on Section 56 of The Electricity Act, 2003. That provision reads as under:-

“56. Disconnection of supply in default of payment.-

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut

off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- (a) an amount equal to the sum claimed from him, or*
- (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

11. On 13-7-2011, the first respondent passed an order by majority rejecting the prayer of the second respondent and held that this differential amount claimed is payable and that the said bill is legal and proper. There were certain other issues but eventually the order is that the grievance of the consumer is rejected.

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12. Being aggrieved and dissatisfied with this, the second respondent filed a Representation bearing No.119 of 2011 before the Electricity Ombudsman/respondent No.1, seeking to quash and set aside the bills.

13. On 12-10-2011, the first respondent allowed this Representation and a copy of that order is at Exhibit-D to the petition.

14. To the extent that is relevant for our purpose, the same reads as under:-

“7. It is clear from the above that the Honorable High Court allowed the Distribution Licensee to recover the arrears only for two years preceding the date of demand and not for 26 months. The ratio of this judgment of honorable division bench of the High Court was further affirmed by the Honorable High Court, in the cases of MSEDCL versus M/s. Green World Magnum Enterprises (Writ Petition no.2894 of 2007 decided on 07.09.2007) and MSEDCL versus Venco Breeding Farms Pvt. Ltd. (Writ Petition no.6783 of 2009, decided on 05.03.2010). In view of this the Respondent is entitled to recover past arrears only to the extent of maximum two (2) years preceding December, 2010, in which the Respondent issued the impugned supplementary bill.

8. In the result, the Representation is allowed. Forum's order is set aside. Respondent is not entitled to recover the difference amount between the charges of electricity

supplied and the amounts paid by the Appellant during the period of more than two years, preceding December, 2010. The Appellant is liable to pay the difference amount between the charges of electricity supplied and the amounts paid by him during the period from January, 2009 to December, 2010 only. Excess amounts recovered shall be refunded with interest as stipulated in section 62(6) of the Electricity Act, 2003. The Forum shall keep this position of law in mind for deciding similar cases in future.”

15. Aggrieved and dissatisfied with this order of the Electricity Ombudsman, MSEDCL filed a writ petition under Articles 226 and 227 of the Constitution of India. It is on such a petition that the referring order has been passed by the Learned Single Judge.

16. More or less, similar are the facts and circumstances in the other writ petitions filed by MSEDCL and by the consumers.

17. Notably, the consumers seek to support the view of the Electricity Ombudsman and oppose the submissions to the contrary of the MSEDCL.

18. Mr. Kumbhakoni, learned Advocate General

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appearing for the MSEDCL, would submit that the classes of consumers which the MSEDCL caters to, and particularly in the industrial sector requires installation of distribution equipments. Pertinently, in the industrial units huge machines are installed and they are operated with the electricity supplied at a very high voltage and current. These High Tension consumers are supplied electric energy with voltage as high as about 11,000/22,000/33,000/EVH volts. If such high voltage/current supply is allowed to directly pass through an electric meter installed for measuring the quantity of electricity supplied, the electric meter may itself instantaneously burn or may explode. Therefore, it is not possible to measure the quantity of the electric energy so supplied at very high voltage/current, by making it pass entirely through an electric meter and by looking at the meter reading.

19. It is, therefore, necessary that the electricity so supplied is converted by transformation of current and voltage by providing Current Transformer and Voltage Potential Transformer units. In such cases, the actual electricity (with

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substantially reduced voltage and current) passes through the electric meter. The same is though proportionate to the one actually supplied, it is only a small portion of the electric energy actually supplied (like a miniature image). Therefore, in such cases the actual meter reading does not reflect the correct amount of electric energy supplied to the consumer. Resultantly, it becomes necessary to apply to such actual meter reading a proper multiplying factor so as to get the actual/correct amount of electric energy supplied to the High Tension consumer. In many such cases bills are raised, sometimes without applying the requisite multiplying factor or by applying an incorrect multiplier, either through oversight or due to clerical errors or for some other reasons. After such mistake is detected, bills are raised for the balance amounts, by applying the correct multiplying factor, for which the bills ought to have been raised but are not raised, on account of such mistakes, etc.. In short, such supplementary bills are issued only for the balance amounts.

20. In such cases, the claims under these bills are

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opposed on the ground, *inter alia*, that such claims for the balance amounts are barred by sub-section (2) of Section 56 of the 2003 Act. If action is proposed to be taken for disconnection of the electricity supply, under sub-section (1) of Section 56 reproduced above, for non-payment of such balance amounts claimed by the supplementary bills, then, these bills are also opposed on similar ground of bar of limitation.

21. Mr. Kumbhakoni was at pains to point out that sub-section (2) of Section 56 though separately numbered, it will have to be considered not as an independent or separate provision, operating on its own but only as a proviso to sub-section (1) of Section 56. The words employed by the Legislature in sub-section (2) demonstrate that intention of the Legislature.

22. Mr. Kumbhakoni then submits that, a *non obstante* clause ordinarily operates in close proximity to the enacting section and its amplitude is to be confined to the Legislative policy. Its applicability cannot and need not be extended beyond

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the Parliamentary intention as such.

23. Mr. Kumbhakoni then submits that, in the present case the words “Notwithstanding anything contained in any other law for the time being in force” needs to be appreciated as against the words that are otherwise used by the Legislature viz., “Notwithstanding anything contained in this enactment and any other law for the time being in force”. The absence of the words “in this enactment” or “in this Act” clearly demonstrate the intention of the Legislature that, the said *non obstante* clause is not to override other provisions of the said Act itself. In such cases a proviso does not and cannot deal with subjects that are foreign to the main section itself. Therefore, the said sub-section (2) will not operate where recoveries of sums due are to be made under the other provisions of the said Act.

24. Mr. Kumbhakoni then submits that, this provision applies only and only when an action is being taken of disconnection of supply, when the consumer 'neglects to pay' the amount due in terms of the bills issued, for recovering amounts

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that are due to the licensee or the generating company. In those cases where such an action of disconnection is not taken, the said provision, including sub-section (2) thereof, cannot apply.

25. Mr. Kumbhakoni then submits that, the words “under this section shall be recoverable after the period of two years” make the said position very clear. Therefore, if amounts are being recovered under any provision of the said Act other than Section 56, the bar of two years cannot be invoked.

26. Mr. Kumbhakoni then submits that, the said provision deals with a punitive action to be taken by way of disconnection of supply for non-payment of amounts that are due and payable. Therefore, the intention of the Legislature appears to be that in such cases, such action should not be taken, if the licensee or the generating company has not been itself vigilant in taking steps for claiming its dues. The said bar of two years cannot be read into the provisions of the said Act other than Section 56, whereunder amounts are being recovered, without taking recourse to such punitive action.

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27. Mr. Kumbhakoni then submits that, in other words, the sub-section (2) of Section 56 only provides a limitation to take recourse 'to cutting of electricity supply' and limits it for a period of two years from the date when "the sum becomes due". Independent of such an action and rather unconnected therewith, the sum due can certainly be recovered by way of any other method, such as a filing of suit.

28. Mr. Kumbhakoni then submits that, Section 56 falls in Part VI of the said Act that deals with "Distribution of Electricity" and falls within the sub-heading "Provision with respect to supply generally". It is thus clear that the said provision is not meant to deal with 'the recovery' of the charges due from the consumers. Therefore, the provision of 'cutting of electricity supply' for 'neglecting' to clear the arrears need not be considered necessarily as a coercive mode of recovery of the arrears, though from the consequences flowing from it, apparently it appears to be so.

29. Mr. Kumbhakoni then submits that, in the aforesaid

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regard it may kindly be appreciated that in terms of, generally the scheme of the said Act and its provisions, such as Section 43, the licensee or the generating company is under a statutory obligation and it is its legal duty to supply electricity to everyone who seeks to avail it. All that Section 56 does is that, it relieves the licensee or the generating company from its statutory obligation or its legal duty to do so, under the circumstances contemplated by the said Section 56 and permits the licensee or the generating company to cut the electricity supply and thereby refuse to supply the electricity. This is obviously because it cannot happen that, even if the consumer neglects to make the payment of the charges due to him/her/it towards the supply of electricity, still the statutory obligation and/or the legal duty of the licensee or the generating company to supply electricity to such a defaulting consumer continues indefinitely. Thus, Section 56 strikes the balance between the mutual rights and obligations of the consumers on one hand and the licensee or the generating company on the other hand.

30. Mr. Kumbhakoni then submits that, in the light of

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the aforesaid, though the effect and the consequence of the operation of Section 56 may result into the recovery of the arrears of the charges due from the consumer, which the consumer has neglected to pay, the said provision does not appear to be meant or designed to be 'a mode of recovery' of such overdue charges. Resultantly, there is no scope for reading into the said provision anything more to spell out a period of limitation, to recover such charges that are due from the consumer.

31. Mr. Kumbhakoni then submits that, even in this regard, the time of two years will start to run against the licensee, to put it in the same words of the said section: from the date when such sum became first due. Therefore, it is requisite to find out when "sums become first due" from the consumer to the licensee.

32. Mr. Kumbhakoni then submits that, no doubt the moment electricity is consumed/used by the consumer the liability of the consumer to pay for it starts. However, the sums

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do not become due and payable immediately on such consumption. This is principally because before determining such sums that would become due and payable by the consumer, it is necessary for the licensee to calculate not only the exact extent/amount of the electric energy so consumed/used but also the rate at which the consumer has made itself liable to pay for it. This involves exercise on the part of the licensee to be undertaken at the end of which a bill is generated, quantifying the exact “sum that has become due” to it from the consumer. Only upon service of such a bill, the sum set out therein becomes due and payable by the consumer to the licensee. It is therefore clear that only upon, not only preparation of a bill but also upon its service on the consumer, that the “sum becomes first due” and payable by the consumer and not till then.

33. Mr. Kumbhakoni then submits that, from the over-all scheme of the said Act it is also clear that it will be incorrect to assume that the “sum becomes first due” immediately upon the simplicitor consumption of the electricity. The word ‘due’ appearing in Section 56 must mean “due and payable after a

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valid bill has been sent to or served on the consumer.”
Otherwise, the amount will become payable the moment electricity is consumed and if charges in respect thereof are not paid then even without the bill being issued a notice of disconnection would be liable to be issued under Section 56. In such case, even without issuing any bill and without knowing the actual “sum due” and payable by it to the licensee, it will have to be assumed that the consumer has become liable for payment of an unascertained, unspecified amount.

34. Mr. Kumbhakoni then submits that, if the bills are not sent in time the loser is obviously the licensee, who is entitled to receive the money. It cannot be forgotten that, for the delayed period of issuing the bill, in fact the consumer has used the money due and payable to the licensee. A specific contention that the consumer had based its own costing of fabrication, production or other charges on the electricity bills send, which had been duly paid and that consumer would not be entitled to recover the supplementary fabrication charges from its customers, which would lead to huge loss to the consumer was

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raised in one of the case, which has not been accepted by the Court.

35. Mr. Kumbhakoni then submits that, there is no warrant in the said Act to read the word 'due' in a narrower sense and restrict it to only such amounts that have become payable within the period of, so called limitation of two years. There is also no warrant for considering "the sum due" as restricted to a sum falling due within any specific period of time.

36. Mr. Kumbhakoni then submits that, the word "due" always refers to a fixed and settled liability. The Courts have always recognized a difference between 'an ascertained sum presently due' and claims which do not become due until the liability is adjudicated and/or assessed. If a back billing claim, on account of slow meter recording is made, it remains merely 'a claim' and not 'an amount due' until determined by the licensee and in regard to such 'a claim' Section 56 will not apply.

37. Mr. Kumbhakoni then submits that, in the said Act, Rules or the Supply Code there is no specific provision that

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firstly, provides for a specific limitation for issuance and/or raising of bills and secondly, provides that recovery of the amounts specified in the bills issued after specified period, starting from the actual consumption of electricity, is barred by limitation. Therefore, there is no warrant to draw a conclusion, on the basis of any provision of the said Act, Rules or Supply Code, that bills cannot be legally issued and/or that amounts of such bills cannot be recovered after a specific period of time.

38. Mr. Kumbhakoni then submits that, The Electricity Act, 2003 is a special statute within the meaning of Section 29 of the Limitation Act. The Limitation Act does not apply to the said Act. In spite of various amendments, if the Legislature did not think fit to make any provision prescribing any period of limitation, particularly for raising/issuing bills, it is clear that, it is not the intention of the Legislature to prescribe any statutory period at all for the same.

39. Mr. Kumbhakoni then submits that, until and unless a statute limits right of an authority to assess, compute or to

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serve a bill or raise a demand, it cannot be said that the authority loses its right, to demand the money due to it by serving a bill. Only after service of a bill the period of limitation for recovery of the sums claimed thereby would arise. Neither the Electricity Act, 1910 nor The Electricity Act 2003 limit or prescribe a time for raising a demand and/or for serving a demand notice. The recovery of the amount and serving of a notice of demand are two different aspects and ought not to be intermixed from the point of view of law of limitation.

40. Mr. Kumbhakoni then submits that, every year the MERC determines tariff. The same is determined after taking into consideration the Annual Revenue Requirement (ARR) that is submitted by the electricity companies/licensees. For computing the ARR the licensees take into consideration the number of consumers belonging to various categories (Agriculture, residential, industrial and commercial). The revenue realized from each category of consumers is considered for determining tariff and meeting the ARR given by the companies. If revenue from commercial or industrial is not

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realized to its fullest then the burden on other categories such as residential, agriculture and public work increases.

41. To support Mr. Kumbhakoni, the petitioners in O.S. Writ Petition No.498 of 2009 and O.S. Writ Petition No.1850 of 2013 (The Municipal Corporation of Greater Mumbai through the General Manager, BSET Undertaking) made additional submissions. These are as under:-

“The petitioners state that under The Electricity Act, 2003 the term “bill” has not been defined. However, under the Maharashtra Electricity Regulatory Commission Regulations, 2005, Rule 15 refers to billing and Rule 15.2.1 refers to bill details which reads as under:-

“**15.2.1** The bill to the consumer shall include all charges, deposits, taxes and duties due and payable by the consumer to the Distribution Licensee for the period billed. In accordance with the provisions of the Act, these Regulations and the Schedule of charges as approved by the Commissioner under Regulation 18.”

The petitioners state that Rule 15.2.4 refers to information that should be included in the bill and item No.(i) thereof refers to multiplying factor of the meter.

Admittedly, the monthly bill issued to respondent No.1 prior bill was issued on the basis of multiplying factor as one, whereas in fact multiplying factor should be and has to be two. Therefore, the bill earlier issued was only for the 50% of the consumption of the electricity. Admittedly there was no bill raised for the balance 50% of the electricity consumed by respondent No.1. The error was purely an human error.

The petitioners state that respondent No.1 applied for the electricity supply and agreement was also signed by respondent No.1 with the petitioner/Undertaking wherein it was mentioned that it is also the responsibility of the consumer to ask for the bill from the petitioner/Undertaking for the consumption of electricity.

The petitioners state that Section 56(2) of The Electricity Act has no application to the demand made by the licensee or the Electricity Board for the unpaid amount for the electricity consumed if the consumer was under billed due to clerical mistake or human error or such like mistake as has been held by this Hon'ble Court in the matter being Judgment dated 20-8-2009 in Writ Petition No.7015 of 2008 between M/s. Rototex Polyester & Anr. v/s Administrator, Administration of Dadra and Nagar Haveli (U.T) Electricity Development, Silvassa & Ors., passed by the Hon'ble Division Bench

presided over by Her Ladyship Smt. Justice Ranjana Desai (as Her Ladyship then was) and His Lordship Mr. Justice A.A. Sayed. The petitioners state that in the said Judgment dated 20-8-2009, the Division Bench of this Hon'ble Court, while discussing at length Section 56(2) of The Electricity Act, 2003 was pleased to hold that the bar of limitation cannot be raised by the consumer in cases where the Department erroneously short billed the consumer and further held that the “due” date as spelt out under Section 56(2) shall be from the date of the revised bill and not from the date of the consumption of electricity and the period of two years shall be applicable from the date of the revised bill.”

42 On the other hand, the Senior Counsel for the respective respondents would urge that The Electricity Act, 2003 is a consolidating statute and repeals The Indian Electricity Act, 1910 and The Electricity (Supply) Act, 1948, so also The Electricity Regulatory Commissions Act, 1998. Sub-section (1) of Section 24 of the 1910 Act is in *pari materia* with sub-section (1) of Section 56 of the 2003 Act. However, sub-section (2) of Section 56 of the 2003 Act was not a provision found in Section 24 of The Indian Electricity Act, 1910. Thus this is a new provision.

43. In interpreting a new provision, this Court should always take assistance of the repealed law or the provision appearing therein so that it is easy to deduce the mischief sought to be remedied or removed. In that regard, the argument of the Counsel for respondent No.1 in O.S. Writ Petition No.1850 of 2013 is as under:-

“1. It is settled law that to construe the statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to ascertain evils to which the former Act had given rise, and to the latter Act which provided the remedy [In re Mayfair Property Company, Bartlett v. Mayfair Property Company, LR (1898) 2 Ch 28 at p.35].

2. The Standing Committee on Energy (2002), 13th Lok Sabha, Ministry of Power, 31st Report on the Electricity Bill, 2001, *inter alia*, provides as follows:-

“J. Protection to consumers from arbitrary billings:

8.59 It may be seen that similar provision exists in the Act of the present Bill except that now restrictions have been made for recovery of arrears pertaining to the period prior to two years from consumers unless the arrears have been continuously shown in the bills,

justifying their stand the Ministry of Power in a note stated:-

“It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings.”

3. Thus, the enactment of sub-section (2) of Section 56 was to address the mischief of arbitrary billings and not serving/raising of exorbitantly high electricity bills on consumers for a long period (wrongfully, wilfully because of prevalent practices or due to other reasons). The amount of the bill raised after the long period would surely be beyond the consumer's paying capacity, non-payment of which would automatically lead to consequences of dis-connection. Such a consequence, where huge sums are wrongly demanded from consumers, has been prohibited by sub-section (2) of Section 56 as no sum can be claimed from a consumer after the period of two years from the date “when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied”.

4. The words “first due” in sub-section (2) does not appear in sub-section (1). If the words “first due” is to be interpreted as the date of the bill then in that event a sum claimed for consuming electricity a decade back or two decades back will be recoverable within two years

from the date of the bill/due date mentioned in the bill (belatedly raised). This interpretation would militate against the objects sought to be achieved by the 2003 Act, *inter alia*, viz., “protecting interest of consumers”.

5. If the words “first due” is to be interpreted as the date when the electricity was first consumed then in that event a bill is mandatorily raised within two years when the electricity was so first consumed. Thereafter, the time bar of two years would trigger and no sum would be recoverable. The saving provision available to the distribution licensee is that the sum ought to have been shown continuously as recoverable as arrear of charges for electricity supplied.

6. The words “first due” appearing in sub-section (2) must be distinguished from the word “due” appearing in sub-section (1) of Section 56. The word “due” in sub-section (1) would mean the due date mentioned in the bill so that when the consumer neglects to pay the bill then only the consequence of disconnection could be effected. However, the words “first due” in sub-section (2) would mean the date when the electricity was consumed/used, so that without any valid bill having been raised for two years from the date when the electricity was consumed/used, no sum is recoverable.

7. If the petitioner-licensee is allowed to recover the sums after 17 years then the words “such sum ought to

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have been shown continuously as recoverable as arrears of charges for electricity supplied” appearing in sub-section (2) of Section 56 would be rendered completely otiose.

8. Hence, in the present case, the petitioner's claim made after an inordinately long period of 17 years for differential amount arising from the tariff applicable to residential category and commercial category is completely time barred.”

44. The counsel appearing for the first respondent/consumer in O.S. Writ Petition No.498 of 2009 would submit that the disputed bill period is from 25-6-1998 to 1-5-2001. However, the electricity bills raised from 18-12-1997 to 1-2-2009 are available. In the bill dated 13-2-2006 onwards and for the period covered from 1-12-2005 to 1-1-2006, it would be apparent that the distribution licensee did not send any amending bill for 7-years. The bills for 1998 to 2001 were raised in May, 2005. Thus, the MSEDCL failed to correct the bill for a period of 7-years and also failed to intimate the respondent. It purported to send the amended bills for arrears on 6-5-2005, which is after 7-years from the date when the meter was

undercharged. Mr. Khare would further submit as under:-

“1. It is observed in Rototex Polyester & Anr. v/s Administrator, Administration of Dadra and Nagar Haveli (U.T) Electricity Development, Silvassa & Ors. and Brihanmumbai Municipal Corporation 2009 (5) ALL MR 579 v/s Yatish Sharma and Others, AIR 2007 Bom. 73 that, where the Petitioner has committed an error in applying multiplier factor, the Petitioner can wake up after several years, without there being any limitation on the period within which said error can be noticed as is contended by the Petitioner.

2. If the above interpretation observed in the said two cases is considered results in a situation where the Distribution Licensee can wake up and issue a supplementary bill after any number of years without there being any limitation on the numbers of years after which said supplementary bill is issued and can thereafter, claim that the amount becomes due from the date on which it is sought to have been levied and demanded by presenting a bill by claiming that the amount becomes due only when the supplementary bill is issued. Such interpretation will lead to absurd results. (G.S. Godbole, J. Order, Para 10)

3. Correct interpretation as per Respondent No.1 in the instant case is rather taken in the following cases:

4. In Awadhesh S. Pandey v/s Tata Power Company Limited, AIR 2007 Bom. 53, the Hon'ble Court held that the distribution licensee is entitled to recover the amended claim by correcting multiplying factor but limited to a period of two years back, from the date when such demand was raised. Claim pertaining to the period prior to two years were disallowed.

5. In Maharashtra State Electricity Distribution Company Limited v/s The Electricity Ombudsman 606, Keshava, W.P. No.10764 of 2011 (Bombay HC), it has been observed that, the problem and dispute arises when the Distribution Licensee like Petitioner seeks to recover electricity charges and dues beyond a period of two years. In a case where such dues have not been continuously shown as recoverable as arrears of charges for electricity supplied, Section 56(2) bars the recovery.

Thus, the Petitioner should be barred under Section 56 (2) of the Electricity Act, 2003 since recovery period has expired.”

45. Mr. Rahul Narichania, learned Senior Counsel appearing for the petitioner(s) in Civil Writ Petition Nos.5367 and 9858 of 2016, who are the consumers, would urge that the

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first respondent/distribution company has for a period of more than 20 years charged the petitioner/company in Civil Writ Petition No.5367 of 2016 for the supply of electricity on the basis of its categorisation (High Tension Industrial Consumer). The officials from the Vigilance Department visited the plant premises to carry out a spot inspection on 18-12-2015 and thereafter issued/raised the supplementary bills charging the petitioner/company at a commercial rate. The period was 2012 to 2016. Though the original bills have been paid on time and as per the demand, this supplementary bills seek to reopen the concluded issues and that is how the disconnection notice was challenged by filing these petitions. There was interim stay granted to the recovery under the supplementary bills but during the pendency of the writ petitions, another supplementary bill for the period commencing from June, 2008 to July, 2012 was issued and disconnection was threatened. This necessitated the further interim order granted by this Court on 30-8-2018. In Civil Writ Petition Nos.5367 and 9858 of 2016, the broad submissions of Mr. Narichania are to the following

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effect:-

“1. The word “Payable” is not to be found in section 56(2) of the Indian Electricity Act, 2003.

2. The words “Due” and “Payable” are not synonymous with each other in the context of this case.

3. What is due is not necessarily payable.

4. An amount may become due by virtue of usage/consumption of the goods/services but it may not become payable until an Invoice has been issued. Therefore “due” must mean date of usage/consumption. If it is to be construed as being due only on issuance of a Bill, a Bill can be issued after 10 years thereby defeating the objective of section 56.

5. Section 56(2) non-obstante clause: The words unless such sum has been shown continuously as recoverable as arrears and charges for electricity supplied and the licensee shall not cut off electricity supply.

This shows that for the time bar not to apply:-

i. A sum must be shown as continuously recoverable, this can only be by issuance of a bill.

ii. And if a bill is issued, then as long as the bill is

unpaid (but the sum is shown recoverable) the sum due can be recovered even after the expiry of the 2 years period prescribed by section 56(2).

iii. Such bill however must be issued within 2 years period prescribed under section 56(2). The amount thereafter be shown as have been payable in the books.

6. The word “due” appears in section 56(1). When does the consumer become liable to pay? - this would only be on receipt of the bill. How is a customer to know how much electricity he has consumed and how much is to be paid until a bill is issued?

7. The two years time bar must be given effect and it cannot be rendered otiose. Therefore if bill is issued within 2 years, and the sum continues to be shown as payable the time bar will not apply. But if the bill is issued after 2 years then it is barred.

8. In the present case, bills were issued and paid on time. After several years supplementary bills have been issued despite of the original bills being paid. Therefore, the debt has extinguished.”

46. The other Senior Counsel Mr. R.S. Apte, appearing in Civil Writ Petition No.4573 of 2016, supported

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Mr. Narichania and invited our attention to a Judgment of a learned single Judge of the High Court of Calcutta in the case of **Abdul Hamid & Anr. v. West Bengal State Electricity Distribution Company Limited & Others**, reported in AIR 2017 Calcutta 274.

47. Mr. Abhay Nevagi, appearing for the petitioner in Civil Writ Petition No.495 of 2015 would, however, urge that the Electricity Act was brought into effect to improve the performance of the State Electricity Board which deteriorated on account of various factors. The changing times required the concepts to be modified and amplified. There are now new concepts put into effect, namely, power distribution with peculiar facets such as open access and determination of tariff by the Regulatory Commissions. It is that intent which is apparent from the language of Section 56. The broad basis on which the section is worded, is that no one can take advantage of his own wrong. The scope of Section 56 is confined to one matter, namely, wrong classification of the consumer. The other aspects, namely, unauthorised supply is governed by Section

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126, whereas theft is governed by Section 135. The other matter of burning of meter or slow meter is governed by a supply code.

Mr. Nevagi, therefore, submits as under:-

1. The relevant provisions of E.A. need to be referred are Sections 55, 56 and 62. Section 55(2) provides for proper accounting and audit in the generation, transmission and distribution or trading of electricity. Section 55(3) provides for default in complying of the provisions. Section 62 deals with determination of tariff.

2. The relevance is MSEDCL after audit of the accounts is required to submit proposal of tariff based on audited financials to MERC. That means loss if any occurred to MSEDCL in the previous financial year need to be considered by MERC for revision every year.

3. As far as classification of consumer is concerned it is prerogative of distribution licensee (refer pg. 43 of compilation). Distribution Licensee is required to enter into agreement (refer pg. 36 of compilation). The Agreement provides for purpose of usage of electricity that means classification.

4. The Distribution Licensee is required to visit premises of the consumer for meter reading once every two months (refer pg. 44 of the compilation [Regulation 14.3]) along with this read Regulation 15 Distribution

Licensee is required to provide bill with details stated in the said Regulations. The bill is supposed to provide category of consumer, type of supply, multiplying factor, last 6 months consumption, etc.

5. The Commercial Circular No.175 dated 05/09/2012 Pg. 53 to 60 provides for classification of consumers. Pg. 60 Clause-4 specifically provides that existing/prospective consumers should be properly categorized by actual inspection immediately and data to be immediately updated in IT data base. The said Circular also provides for sensitizing staff about various aspects of tariff order.

6. Therefore, the mandate of law is if Distribution Licensee fails to discharge its legal obligation of classifying consumer, cannot take advantage of its own wrong and even go back to two years at the time of the classification. The mandate of law can be seen from discussion paper in Parliament at pg. 14, para-J.

7. In the present Petition supply was sanctioned on 07/01/2003 and additional power was sanctioned on 28/03/2011 under HT-1 Industrial Category. The category was changed from 02/01/2012 and HT-2 Commercial tariff was applied. 17/07/2012 category was again changed to HT-1 but bills were raised under HT-2 commercial. 16/10/2014 Supplementary Bill for 497449/- was issued seeking recovery of tariff difference

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from June, 2008 to December, 2011. This is against the law. MSEDCL started supply in 2003 while additional supply placed in HT-1 Industrial Category. It changed category to HT-2 Commercial and raised bill on 16/10/2014. This is like taking advantage of own wrong and in violation of mandate of E.A., 2003.

8. Section 145 bars jurisdiction of Civil Court. This contention based on legal proposition that in order to invoke jurisdiction of Civil Court there has to be legal right or contractual right. The said right is forfeited by Section 56 based on legal proposition that you cannot take advantage of your own wrong.

9. Supreme Court Judgment in the matter of *State of Kerala versus Mathia Verghese* 1986 SCC (4) 746 may be referred for interpretation of law. Therefore, keeping the abovementioned submissions and submissions made in the course of argument the Petition may kindly be allowed.”

48. For appreciating the rival contentions, a reference will have to be made to The Electricity Act, 2003, in detail.

49. The Statement of Object and Reasons leading to the enactment read as under:-

“STATEMENT OF OBJECTS AND REASONS

The Electricity Supply Industry in India is presently governed by three enactments namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998.

1.1 *The Indian Electricity Act, 1910 created the basic framework for electric supply industry in India which was then in its infancy. The Act envisaged growth of the electricity industry through private licensees. Accordingly, it provided for licensees who could supply electricity in a specific area. It created the legal framework for laying down of wires and other works relating to the supply of electricity.*

1.2 *The Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Board. The State Electricity Board has the responsibility of arranging the supply of electricity in the State. It was felt that electrification which was limited to cities needed to be extended rapidly and the State should step in to shoulder this responsibility through the State Electricity Boards. Accordingly the State Electricity Boards through the successive Five Year Plans undertook rapid growth expansion by utilising Plan funds.*

1.3. *Over a period of time, however, the performance of SEBs has deteriorated substantially on account of various factors. For instance, though power to fix tariffs vests with the State Electricity Boards, they have generally been unable to take decision on tariffs in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross-subsidies have reached unsustainable levels. To address this issue and to provide for distancing of government from determination of tariffs, the Electricity Regulatory Commissions Act, was enacted in 1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which the State Governments can create a State Electricity Regulatory Commission. 16 States have so far notified/created State Electricity Regulatory Commission either under the Central*

Act or under their own Reform Acts.

2. Starting with Orissa, some State Governments have been undertaking reforms through their own Reform Acts. These reforms have involved unbundling of the State Electricity Boards into separate Generation, Transmission and Distribution Companies through transfer schemes for the transfer of the assets and staff into successor Companies. Orissa, Haryana, Andhra Pradesh, Karnataka, Rajasthan and Uttar Pradesh have passed their Reform Acts and unbundled their State Electricity Boards into separate companies. Delhi and Madhya Pradesh have also enacted their Reforms Acts which, *inter alia*, envisage unbundling/corporatisation of SEBs.

3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998 in a new self-contained comprehensive legislation arose. Accordingly it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the State and all other stake holders and experts.

4. The main features of the Bill are as follows :-

- (i) *Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.*
- (ii) *There would be a transmission Utility at the Central as well as State level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load despatch function could be kept with the Transmission Utility or separated. In the case of separation the load despatch function would have to remain with a State Government organisation/company.*
- (iii) *There is provision for private transmission licensees.*
- (iv) *There would be open access in transmission from the outset with provision for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.*
- (v) *Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licensees.*
- (vi) *The State Electricity Regulatory Commission may permit open access in distribution in phases with surcharge for -*
 - (a) *current level of cross subsidy to be gradually phased out along with cross subsidies; and*
 - (b) *obligation to supply.*

- (vii) *For Rural and remote areas stand alone systems for generation and distribution would be permitted.*
- (viii) *For rural areas decentralised management of distribution through Panchayats, Users Associations, Cooperatives or Franchisees would be permitted.*
- (ix) *Trading as a distinct activity is being recognised with the safeguard of the Regulatory Commissions being authorised to fix ceiling on trading margins, if necessary.*
- (x) *Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.*
- (xi) *There is provision for a transfer scheme by which company/companies can be created by the State Governments from the State Electricity Boards. The State Governments have the option of continuing with the State Electricity Boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. The service conditions of the employees would as a result of restructuring not be inferior.*
- (xii) *An Appellate Tribunal has been created for disposal of appeals against the decision of the CERC and State Electricity Regulatory Commissions so that there is speedy disposal of such matters. The State Electricity Regulatory Commission is a mandatory requirement.*
- (xiii) *Provisions relating to theft of electricity have a revenue focus.*

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5. *The Bill seeks to replace the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998.*

6. *The Bill seeks to achieve the above objects.”*

50. Thus, consistent with this object, the Act was enacted by the Parliament and Sections 1 to 120 and Sections 122 to 185 thereof came into force on 10-6-2003.

51. The Preamble to the Act reads as under:-

“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

(underlining ours)”

52. This Act is divided into several Parts and to be precise, 18 in number. Part-I contains preliminary provisions. Section 2, titled as “Definitions” falls in this preliminary Part and some of the definitions are absolutely relevant. They are reproduced hereinbelow for ready reference:

- “(2) "appointed date" means such date as the Central Government may, by notification, appoint;*
- (3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;*
- (4) to (14)*
- (15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;*
- (16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;*
- (17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;*
- (18)*
- (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;*

(20) to (22)

(23) "electricity" means electrical energy--

- (a) generated, transmitted, supplied or traded for any purpose; or
- (b) used for any purpose except the transmission of a message;

(24) to (27)

(28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

(29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

(30) "generating station" or "station", means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

(31) to (37)

(38) "licence" means a licence granted under section 14;

(39) "licensee" means a person who has been granted a licence under section 14;

(40) to (48)

(49) "person" shall include any company or body corporate or association or body of individuals,

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whether incorporated or not, or artificial juridical person;

(50)

(51) *"premises" includes any land, building or structure;*

(52) to (58)

(59) *"rules" means rules made under this Act;*

(60) to (69)

(70) *"supply", in relation to electricity, means the sale of electricity to a licensee or consumer;*

(71) to (75)

(76) *"wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;*

(77)”

53. Part-II contains Sections 3 to 6 and this Part is titled as “National Electricity Policy And Plan”. A combined reading of the sections in this Part would reveal as to how a National Electricity Policy and Tariff Policy has to be prepared by the Central Government in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, etc.. There is also an emphasis on rural electrification.

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54. Part-III is titled as “Generation Of Electricity” and that is given a prominent place as is clear from a reading of Sections 7 to 11.

55. Part-IV is equally important and that is titled as “Licensing”. That contains Sections 12 to 24 and it is evident from a perusal of Sections 12 and 14 that there is a licence which is required to be obtained, or there is an exemption which is required to be obtained in respect of the requirement of holding a licence. The licence can be to transmit electricity, or distribute electricity, or undertake trading in electricity. It is evident from a perusal of Section 14 that if the licence is obtained on fulfilment of the procedure prescribed in that behalf, if the licensee abides by the conditions of the licence, then, he can, subject to the power of revocation of licence, undertake the activity of generating or distributing or trading in electricity. Part-V is titled as “Transmission Of Electricity” and that contains Sections 25 to 41. Thus, these sections permit inter-State transmission, intra-State transmission, and then there are other provisions relating to transmission. Pertinently, there

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are charges and which are required to be paid for intervening transmission facilities. Section 36 provides for such charges and the same reads as under:-

“36. Charges for intervening transmission facilities.-

(1) *Every licensee shall, on an order made under section 35, provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon:*

Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.

(2) *The rates, charges and terms and conditions referred to in sub-section (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.*

Explanation:- For the purposes of sections 35 and 36, the expression "intervening transmission facilities" means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.”

56. For our purpose, Part-VI, titled as “Distribution Of Electricity” is extremely relevant and naturally highlighted. This Part is containing Sections 42 to 60. There are sub-heads of the broad title Distribution of Electricity. There are provisions with respect to distribution licensees, provisions with respect to electricity traders and provisions with respect to supply

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generally. Equally, there are provisions under the sub-head
Consumer protection: Standards of performance.

57. We would devote our special attention to this Part.
The duties of distribution licensees and open access are set out
in Section 42 and it reads as under:-

“42. Duties of distribution licensee and open access.-

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be

leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003), by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-sec. (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

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(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights, conferred upon him by those subsections.”

58. A perusal of the sub-sections of Section 42 and which would have to be read harmoniously and together reveals that there is a duty cast on the distribution licensee to develop and maintain an efficient coordinated and economical distribution system in the area of supply and to supply electricity in accordance with the provisions contained in the Act. Then there is an obligation to introduce open access in phase-wise manner and that is an obligation on the State Commission. By sub-section (3) of Section 42, it is clear that any person whose premises are situated within the area of supply of a distribution licensee, and such person not being a local authority engaged in the business of distribution of electricity before the appointed date, requires a supply of electricity from a generating company or any licensee other than such distribution licensee, then, such a person has a discretion to issue notice requiring the

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distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access. Then, there is not only a charge of wheeling but also an additional surcharge and which can be specified by the State Commission. This is to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

59. Then comes Section 43 which reads as under:-

“43. Duty to supply on request.- (1) *Save as otherwise Provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section,

"application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

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

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

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

60. A bare perusal of this Section would indicate as to how there is a duty to supply on request and that is of the distribution licensee. The failure to fulfil this duty invites a penalty in terms of sub-section (3) of Section 43. It is only when the distribution licensee is prevented from supplying electricity to any premises by natural causes, then, the distribution licensee is relieved of this duty. Then follows other important provisions – Sections 45, 46, 47 and 48.

61. A combined reading of these provisions would indicate as to how there is a power conferred on the distribution

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licensee to recover the price for supply of electricity, and there is a power to recover expenditure and power to require security to be furnished. Each of these provisions follow Section 43 and that is to discharge the duty to supply electricity on request. By Section 48 there is a discretion in the distribution licensee who may require a person desiring supply of electricity to accept additional terms of supply. There is other business which the distribution licensee can carry on in order to achieve optimum utilisation of its assets. Then, there are certain provisions with respect to electricity traders and we are not concerned with the same. Section 53 sets out provisions with respect to supply and these are general provisions. The control of transmission and use of electricity is with the Central Transmission Utility. The provision relating to safety and electricity supply enable the Authority to act in consultation with the State Government so as to specify suitable measures relating to safety and electricity supply. Section 55 is preceding Section 56 and by this section installation of a correct meter in accordance with the regulations is possible. That is for proper accounting and audit in the

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generation, transmission and distribution or trading of electricity and therefore it is possible even for a generating company to install meters. A default invites action in terms of sub-section (3) of Section 55. It is thereafter that Section 56 follows and which we have reproduced above.

62. By Section 57, standards of performance of licensee are to be specified by the Appropriate Commission and there is an information with respect to levels of performance which shall be provided by the licensee to the Appropriate Commission within the time period specified by the Commission. Even market domination is a malady which is sought to be remedied in terms of Section 60. Part-VII is titled as “Tariff” and the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, it is guided by the principles set out in Section 61, Clauses (a) to (i). Section 62 is important for our purpose and reads as under:-

“62. Determination of tariff.- (1) *The Appropriate Commission shall determine the tariff in accordance with*

the provisions of this Act for-

- (a) *supply of electricity by a generating company to a distribution licensee:*

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- (b) *transmission of electricity;*
(c) *wheeling of electricity;*
(d) *retail sale of electricity:*

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for the promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

- (2) *The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

(3) *The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

- (4) *No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under*

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the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”

63. Thus there is a scientific method adopted for determination of tariff, and by the Parts following Part-VII it is the Authorities set up under the Act, including the Tribunal, who have to monitor the discharge of duties by the functionaries under the statute. The Authorities and the Tribunal ensure that these duties are discharged in such a manner so as to achieve the object and purpose of the enactment. The other Parts are but aiding and assisting all concerned to work the enactment itself.

64. Section 56 would require a closer look but before we do that, we must deal with one argument of Mr. Nevagi. Mr. Nevagi relied upon Part XIV of the Act, titled as “Offences And

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Penalties”, and particularly the section pertaining to theft of electricity. His emphasis was that Section 56 is confined to one issue, namely, wrong classification of the consumer. We do not think that the argument is sound for the simple reason that by Part-XII, titled as “Investigation And Enforcement”, the law permits an assessment to be made of the charges payable by the person or any other person benefited by use of electricity. Thus if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, etc., found connected or used, or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorised use of electricity, then he can provisionally assess to the best of his judgment the electricity charges payable and such a provisional assessment can be finalised on compliance with the principles of natural justice which are inbuilt in the sub-sections of Section 126. There is a remedy of an appeal to the Appellate Authority in the event the person is aggrieved by the final order made under Section 126. There is a power to secure compliance of the terms and

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conditions based on which the licence is obtained by the licensee. However, the powers of investigation and enforcement conferred by Part-XII are distinct than those provisions which set out the offences and penalties, that is to take care of theft of electricity. There is a theft of electricity contemplated and which is taken care of by Section 135 whereas theft of electric lines and materials is taken care of by Section 136. These are thus penal provisions which ensure that there is no obstruction or hindrance to supply of electricity nor such supply can be abused or misused. In that event, the provisions referred by us hereinabove enable taking penal action.

65. Section 56 deals with disconnection of supply in default of payment. Now, where the person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, then the power to disconnect is conferred and which power has to be exercised in the manner set out by subsection (1). This indeed is a drastic power and that can be

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resorted to only to take care of a neglect to pay the charge. If there is neglect, then, naturally in a consolidating statute enough provision has to be made to ensure that the charges are paid regularly. Electricity is a material resource and belongs to the public. It is very difficult for the State to ensure regular electricity supply to those who require the same regularly. In fact, equal distribution of material resources so as to achieve common good is the constitutional goal. That is enshrined in Article 39(b) and (c) of the Constitution of India. Thus material resources have to be evenly distributed and merely because those who cannot afford to pay for these resources, the State, by stepping in, has to ensure that they are not deprived of the use and enjoyment of the same. For ensuring that the constitutional goal is truly fulfilled that the Authorities have been conferred with such powers. That would ensure maintenance of compliance, in the sense that the electricity supply would be assured on payment of charges and regularly. Those who neglect to pay the charge cannot as a matter of right claim the supply of electricity to their premises or establishments. By continuing to

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supply electricity to such defaulters, the Authorities would not be in a position to ensure continuity in the said supply. Eventually, breaks and interruptions in supply or lack of regularity of supply affects the public at large. It is in public interest and for public good that defaulters are to be deprived of the supply of electricity. To enable that, this distinct and separate power is conferred in the licensee or the generating company. The first limb of the section [sub-section (1)] is expansive and covers charges for supply of electricity or any other sum. The reason for that is obvious and namely, the neglect to pay any charge for electricity or any sum other than a charge for electricity which may be due from any person to a licensee or the generating company. This may be due in respect of supply, transmission or distribution or wheeling of electricity to him. It is bearing in mind the various facets of the services rendered that the charge or any sum other than a charge for electricity may be due. To enable the disconnection of supply in default of payment, that the power in terms of sub-section (1) is conferred. Pertinently, it is without prejudice to the rights to

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recover such charge or other sum by Suit. Further, it is not only the supply of electricity but for that purpose disconnection or cutting electric supply line or other works which are the property of the licensee or the generating company through which the electricity may have been supplied, transmitted, distributed or wheeled, that the power has been conferred. The discontinuation will go on until such charge or other sum together with any expenses incurred in cutting off or re-connecting the supply are paid but no longer. Thus this is not a permanent disconnection in that sense. It is possible to obtain a reconnection after payment. Further, the proviso says and in clearest terms that the supply of electricity shall not be cut-off if such person deposits, under protest, the amount or the charges in terms of Clause (a) or (b) of the proviso. The word 'neglect' having been employed in the section, that connotes something which is not legally supportable. The word neglect has been legally interpreted to mean something more than mere want of the discretion. Something like the breach of a duty or legal obligation existing at the time. In Advanced Law Lexicon by P.

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Ramanatha Aiyar, 3rd Edition, Volume-3, Reprint 2007, this expression/word is defined with reference to decided cases as an omission to pay without a reasonable cause. Hence, the proviso clarifies that when there is a dispute between the parties, then, a *bona fide* dispute comprehends no neglect to pay. If sub-section (1) is read in this manner, it presents no difficulty and a balance can be struck. If there is a neglect to pay, then the consequences may be visited. These consequences can be visited if the conferment of power to disconnect is exercised in terms of sub-section (1) and not otherwise. There has to be a notice in writing of fifteen clear days and then only the cutting off or disconnection is possible. Besides this, the foundation for such an exercise of power is neglect to pay. So long as there is no neglect but a *bona fide* dispute is raised, and if the notice of disconnection is issued, then, by the proviso opportunity or chance is given to bring in the sum and deposit it under protest pending disposal of the dispute. If such a deposit is made, even if it is under protest, the supply of electricity cannot be cut-off.

66. By sub-section (2), the category or the beneficiary of

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electric supply, namely, the consumer, is covered. As far as that consumer is concerned, by an overriding effect, sub-section (2) says that Section 56, which may have a marginal heading as disconnection of supply in default of payment, but so far as the consumer is concerned, no sum due from him under Section 56 shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. If this condition is satisfied, then alone the licensee shall cut-off the supply of electricity and not otherwise. Now the issue raised before us is very specific. We do not think that there is any difficulty or confusion in understanding the ambit and scope of the section. Sub-section (2), which is not in the nature of a proviso, as contended by the learned Advocate General, but is an independent provision which applies only to consumers. All the words and expressions that are employed and used in the section in hand have been defined. Unless the context otherwise requires, the definition is as set out in Section 2 and its clauses. In the case of sub-section (2) of Section 56, it

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is the consumer to whom the electricity is supplied. He cannot be vexed in the event the licensee is negligent in recovering the amount due. The licensee can recover the amount due from the consumer only for a period of two years when such sum became first due. In the event, after two years the licensee wants to recover the amount, then it is the obligation and duty of the licensee as well to show the sum due from the consumer continuously as recoverable as arrears of charges for the electricity supplied to the consumer. The supply may be already effected and the charges may be unpaid. However, in the running/monthly bills which are despatched to the consumer, such sum has to be continuously shown as recoverable as arrears of charges of electricity and then alone, after the period of two years, the recovery is permissible. The precondition for disconnection of electricity in the case of any consumer is distinctly set out. In addition to a fifteen days' clear notice in writing before disconnection, the licensee must also satisfy the Court or the Legal Forum that there was not only a neglect to pay on the part of the consumer but additionally the licensee has

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initiated the steps in terms of this provision before the expiry of two years. In case this section is invoked against any consumer after two years, then, action in terms thereof will be permissible only after the sum which was first due has been shown continuously or carried as recoverable as arrears of charges for the electricity supplied. This is ordinarily done by intimating or notifying to the consumer, in the running or monthly bills, such arrears together with the charges for the electricity supplied in the given month.

67. So understood, we do not see any difficulty or any conflict and if the action is challenged in a Court of law, that Court will have to decide the issue on a case-to-case basis. The fulfilment of condition as set out in the sub-sections will be an issue to be decided on the basis of the facts and circumstances in each case. No general rule can be laid down. In terms of the specific conditions of the provision, the fulfilment thereof, in a given case, can be determined, decided and adjudicated upon. If the action is challenged on the ground that the preconditions are not satisfied, then as well, a decision will

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depend on the facts and circumstances of each case. There cannot be any conflict or confusion once the matter is approached in this manner.

68. However, the Learned Single Judge in the referring order opined that there is a conflict between the two Division Bench Judgments of this Court. Hence the reference.

69. For that purpose, we will closely scrutinize both Judgments.

70. In the first Judgment from which the Learned Judge found the latter view to be departed from was delivered in the case of **Awadesh S. Pandey v. Tata Power Co. Ltd. & Others**, reported in AIR 2007 Bombay 52. There the facts were peculiar. The Division Bench had a writ petition before it of Awadesh Pandey. He applied for electric connection from Tata Power/respondent No.1. The respondent No.1 commissioned a meter on Awadesh Pandey's premises on 3-1-2003 for a certain load. The said Pandey started using electricity since 30-8-2003. The bills for the period 30-8-2003 to 30-10-2003, as also

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subsequent bills till November, 2005 were sent to the petitioner- Pandey indicating multiplying factor of one. Tata Power, sometime in November, 2003 or thereabout, conducted an energy audit during the course of which Tata Power found that the petitioner was billed by applying incorrect multiplying factor since beginning. The correct multiplying factor being 40. A supplementary bill was raised in January, 2006 for Rs.12,33,328/-.

71. This bill was contested by filing a complaint before the Consumer Redressal Forum on 6-3-2006. On 25-3-2006 and as the petitioner had not paid the electricity dues in terms of the bill, Tata Power issued notice of disconnection but withdrew it. On 5-5-2006 the Consumer Redressal Forum passed an order against Mr. Pandey, the petitioner before this Court. The petitioner/Mr. Pandey preferred an appeal before the Electricity Ombudsman. He partly allowed the appeal and directed to recover the amended dues under Section 56(2) of the Electricity Act, 2003. Tata Power on 24-7-2006 made a demand for the sum of Rs.11,48,844/- and on that day itself a notice of

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disconnection was issued demanding arrears of Rs.13,17,141.13 paisa. There was no relief given to the petitioner though correspondence continued. The petitioner filed Writ Petition [L] No.1866 of 2004 challenging the notice of disconnection. In the meantime, on 16-8-2006 Tata Power amended the earlier demand/bill as that was not in conformity with the order of the Electricity Ombudsman. Since the petition became infructuous, liberty was granted to withdraw with liberty to file fresh petition. The petitioner once again by letter dated 30-8-2006 called upon Tata Power and respondent No.2 to withdraw the claim. Since the petitioner received a third notice of disconnection issued by respondent No.1/Tata Power on 4-9-2006, that the fresh writ petition came to be filed.

72. In paragraphs 4, 5, 6 & 7 of the Judgment, the Division Bench held as under:-

“4. At the hearing of this petition, the learned Counsel for the petitioner has submitted as under:

- (i) *Whether Electricity Ombudsman can pass order retrospectively covering a period from December, 2003 when the Electricity Ombudsman is established in the month of December, 2004?*

(ii) *Whether the Electricity Ombudsman has jurisdiction to pass impugned order dated 18th July, 2006 allowing back billing for 23 months by amending bills and the regulation system of MERC Regulations, 2006 or part of the disputes have been referred to MERC?*

5. *For the purpose of considering the controversy what is relevant are the provisions of Section 56 of the Electricity Act which we are gainfully reproducing for the purpose of deciding the issues that have been raised by the petitioner herein.*

[Reproduction of the Section is omitted]

6. *Insofar as first issue is concerned, the power to recover is under Section 56 of the Act. A temporary absence or non-appointment of an Electricity Ombudsman cannot defeat the right which otherwise can be claimed by respondent No. 1. Once there be a power and assuming that vacancy of Electricity Ombudsman or Electricity Ombudsman itself has been appointed in December, 2004, would not mean that the authority having jurisdiction is precluded or prohibited from effecting recoveries for the period prior to its appointment. The recovery will, however, be subject to the bar of limitation as contained in Section 56. The Electricity Ombudsman therefore would while exercising jurisdiction, issue an order even in respect of dues which have become due and payable before the establishment of the post of Electricity Ombudsman in December, 2004. The first issue, therefore, has to be rejected.*

7. *We then come to the next issue as to whether the demand made by respondent No.1 is contrary to the provision of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006 held that the respondent No. 1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the*

entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January, 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues having been within two years are recoverable under the provisions of [Section 56\(2\)](#) of the Electricity Act.

Submission of counsel for the petitioner is that the provisions of [Section 56](#) do not empower respondent No.1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for non-payment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of [Section 56](#) would not be attracted. We are afraid, we cannot subscribe to that proposition. [Section 56\(1\)](#) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under [Section 56\(1\)](#) is paid. Relying on sub-section (2), it was strenuously urged that [Section 56\(1\)](#) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee or the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. [The Electricity Act](#) has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore, the impugned order

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passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.”

On the first issue the Court was against the petitioner.

73. As far as the second issue is concerned, the Division Bench opined that the arrears for the consumption in January, 2004 became first due in February, 2004 as the supplementary bill was raised in 2006 and the dues being within two years are recoverable under Section 56(2) of The Electricity Act, 2003. There the question of giving relief by the Writ Court to the petitioner did not arise. The Electricity Ombudsman himself had given substantial relief. He did not allow Tata Power to recover anything beyond what is prescribed by sub-section (2) of Section 56 of the Act. Meaning thereby, the dues for the entire period of 26 months were not allowed to be recovered. However, it is the latter part which presents a difficulty, according to the referring order, in understanding the legal provision.

74. The conflict that was noticed in the referring order is that, in another Judgment of a Division Bench of this Court

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which is reported in 2010 (4) BCR 456 [**M/s. Rototex Polyester & Anr. v. Administrator, Administration of Dadra & Nagar Haveli (U.T.) Electricity Department, Silvassa & Others**], the Division Bench there was approached in a writ petition by a proprietary concern carrying on business at Dadra & Nagar Haveli (U.T.). The Electricity Department, Silvassa had served a demand notice and informed the petitioners that the CT ratio of their metering installation was changed vide office report dated 11-7-2003. That is why the multiplication factor was changed with effect from 11-7-2003. This demand notice of 3-10-2007 stated that, by oversight the Department issued bills for the period July, 2003 to July, 2007 with an incorrect multiplication factor. Hence all the bills for this period are revised by applying the correct multiplication factor. The detailed statement of the revised bills was enclosed to the demand notice. The total amount of the revised bills was Rs.2,60,17,001/-. Thus the revised bills for the period July, 2003 to July, 2007 were directed to be cleared within fifteen days of the receipt of that demand notice. On 12-11-2007, the petitioners replied to this

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notice and stated that they received the energy bill dated 11-1-2008 and that was inclusive of arrears for the period July, 2003 to July, 2007 for a total amount of Rs.2,77,34,867.43. That is how the first writ petition was filed but the Division Bench of this Court disposed it of by saying that this revised bill can be challenged by way of an appeal. Pursuant to that liberty granted by the Division Bench, the petitioners preferred Electricity Appeal No.11 of 2008 and that was dismissed on 12-9-2008 by a reasoned order. Hence the writ petition.

75. The Division Bench noted the controversy in paras 7 and 8 and in paras 9, 10, 11 to 18 observed as under:-

“7. Learned counsel for the petitioners urged that assuming that the said amount is due from the petitioners, the said amount first time became due in July, 2003, but the claim for July, 2003 to July, 2007 is raised only on 3/10/2007 and, therefore, under Section 56(2) of the Electricity Act, 2003, the claim raised by the respondents is time barred. He submitted that therefore the revised bill is liable to be quashed and set aside.

8. As against this, learned counsel for the respondents drew our attention to the judgments of learned Single Judge of this court in U.A. Thadani & Anr. v. B.E.S.T. Undertaking & Anr., 2000 Vol.102(2) Bom.L.R. 502 : [2000 (2) All MR 266] and in Brihanmumbai Municipal Corporation v. Yatish Sharma & Ors., 2007 (3) Bom.C.R.

659 : [2007 (4) All MR 509] and submitted that the present case is squarely covered by the said judgments. He submitted that inasmuch as there is wrong billing due to clerical mistake, limitation period of two years does not apply to this case.

9. *Section 56* of the Electricity Act, 2003 provides for disconnection of supply in default of payment. We are concerned in this case with *Section 56(2)* and hence, it is necessary to quote it.

[Reproduction of the Section is omitted]

10. Sub-section (2) of *Section 56* provides for limitation of two years. It introduces the concept of "the date when such sum becomes first due". In short, a sum which is due can be recovered within a period of two years from the date it became first due and not thereafter. The only sum which is left out of this is the sum which is shown continuously as recoverable as arrears of charges of electricity.

11. *Section 26* of the Indian Electricity Act, 1910 deals with meters. Sub-section (6) thereof is material. It reads thus:

"26. Meters :-

- | | | | |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx |
| (4) | xxx | xxx | xxx |
| (5) | xxx | xxx | xxx |

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy

supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do."

12. *In Bharat Barrel & Drum Manufacturing Company Private Limited v. The Municipal Corporation for Greater Bombay, AIR 1978 Bom. 369, a Division Bench of this court was concerned with a situation where additional amounts for eleven years period were claimed from the consumer on the basis of failure to multiply the reading by 2 (two) and not on the basis of faulty meter. The question was whether the licensee had to restrict its claim to six months. The Division Bench observed that under [Section 26](#) of the Indian Electricity Act, 1910 restriction as to six months does not seem to apply to a claim made by the licensee on the ground that there was a failure to multiply the reading by the changed multiplication factor.*

13. *In U.A. Thadani's case (supra), learned Single Judge of this court was concerned with similar fact situation. Two bills were raised on the consumer demanding additional amounts because multiplying factor was wrongly charged. It was argued by the consumer on the basis of sub-section (6) of [Section 26](#) that the Electrical Inspector could determine the quantum of electricity consumed during the statutory period of six months and for the period anterior to it the reading registered in the disputed meter will have to be presumed to be correct. Relying on the judgment of this court in Bharat Barrel, learned Single Judge held that the restriction as to six months' period provided in [Section 26](#) has no application*

to a demand made by the licensee or the Electricity Board for the unpaid amount for the electricity consumed if the consumer was under-billed due to clerical mistakes or human error or such like mistakes.

14. *The principle which can be deduced from the above judgments is that in case the consumer is under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though [Section 26\(6\)](#) of the Indian Electricity Act, 1910 is not in pari materia with [Section 56\(2\)](#) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence, the challenge raised by the petitioners must fail.*

15. *The question raised in this petition can be examined from yet another angle keeping [Section 56\(2\)](#) of the Electricity Act, 2003 with which we are concerned here in the forefront.*

16. *In Yatish Sharma's case tariff was changed from GP1 to GP2. Between 19/1/2000 and 27/5/2000, the readings of the electronic meter were not taken. A supplementary bill was raised by the petitioner Corporation therein on the basis of the average monthly consumption. By the supplementary bill, a demand of Rs.78,187.17 was raised on the consumer and debited to the amount of the bill for the month of April, 2004. The consumer raised a grievance before the Consumer Grievance Redressal Forum. The matter ultimately reached the Ombudsman. He held that the supplementary bill was raised after a period of four years from the date when it became first due and, hence, the amount was not recoverable under [Section 56\(2\)](#) of the Electricity Act, 2003. The Ombudsman's order was challenged in this court.*

17. *The issue which arose before learned Single Judge was what interpretation should be placed on the words "when such sum becomes first due". The question was whether the Ombudsman's view that since the arrears for consumption became due immediately upon the usage of energy, the supplementary bill raised in August, 2004 for the disputed period between January, 2000 to May, 2000 was barred under Section 56(2).*

18. *While dealing with this submission, learned Single Judge referred to Delhi High Court's judgment in H.D. Shourie v. Municipal Corporation of Delhi, AIR 1987 Delhi 219, where the Delhi High Court was considering the expression "due" appearing in Section 24 of the Electricity Act, 2003. The Delhi High Court observed that if the word "due" is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to be issued under Section 24, which could not have been the intention of the legislature. The Delhi High Court observed that the word "due" in this context would mean due and payable after a valid bill has been sent to the consumer. Learned Single Judge followed this view and set aside the Ombudsman's order which had taken a contrary view. We are in respectful agreement with learned Single Judge. In this case, the demand notice with revised bill dated 3/10/2007 was, according to the petitioners, served on them on 9/11/2007. Therefore, the revised bill amount first became due on 9/11/2007. Hence, Section 56(2) of the Electricity Act 2003 would not come in the way of the respondents from recovering the said amount under the revised bills. The impugned order dated 12/9/2008 warrants no interference."*

76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to

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what meaning has to be given to the expression “when such sum became first due” appearing in sub-section (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in **Rototex Polyester** (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would

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commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for **Awadesh Pandey's** case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was

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obvious because the demand was re-worked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by sub-section (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment

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in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by sub-section (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in sub-section (2) of Section 56 are

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satisfied, there is no question of the electricity supply being cut-off. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

79. As a result of the above discussion, the issues referred for our opinion are answered as under:-

- (A) The issue No.(i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.
- (B) As regards issue No.(ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will

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have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in sub-section (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.

80. Though the Advocate General canvassed a submission that sub-section (2) of Section 56 carves out a special period of limitation and that would also govern a Suit which may be filed to recover the amounts mentioned in sub-section (1) of Section 56, but that issue having not been referred for our opinion in terms of the referring order, we do not think any answer should be given to the same. Hence, that issue is kept open for being urged in an appropriate case.

81. In view of the above, the Registry to list the respective writ petitions and which are pending for disposal before the appropriate Court and to be decided in the light of our answers as above.

(SMT. BHARATI H. DANGRE, J.)

(A.M. BADAR, J.)

(S.C. DHARMADHIKARI, J.)