

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.4669 of 2023

**Metsil Exports Private Limited and Another
Vs.
West Bengal Electricity Regulatory Commission and Others**

For the petitioners	:	Mr. Surajit Nath Mitra, Mr. Tanoy Chakraborty, Mr. Siddharth Shroff
For the WBERC	:	Mr. Pratik Dhar, Sr. Adv., Mr. Ritwik Pattanayak
For the DVC	:	Mr. Abhrotosh Majumdar, Mr. Prasun Mukherjee, Mr. Deepak Agarwal
Heard on	:	28.04.2023, 27.09.2024, 08.11.2024, 29.11.2024, 10.01.2025
Hearing concluded on	:	04.04.2025
Judgment on	:	02.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The petitioner no.1 is a consumer of electricity from the respondent no.3, the Damodar Valley Corporation (DVC), in the State of West Bengal. The petitioner no.2 is one of the Directors of the petitioner no.1-Company.

2. The present writ petition has been filed challenging the vires of Regulation 4.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 (for short, “the 2011 Tariff Regulations”), framed by the West Bengal Electricity Regulatory Commission (WBERC).
3. The second limb of challenge is against the charges levied by the DVC for overdrawal of electricity above the restricted drawal limit fixed by the DVC for a particular period.
4. Learned counsel appearing for the petitioner argues that the WBERC is empowered to frame Regulations under Section 181 of the Electricity Act, 2003 (hereinafter referred to as “the Electricity Act”), read in conjunction with Section 61 of the said Act, regarding electricity tariff. It is argued that by virtue of Regulation 4.4, the power to restrict drawal of electricity and to charge double the amount of electricity charges for drawal of electricity above such amount during the restricted period has been sub-delegated by the WBERC to the licensee. It is contended that the Electricity Act does not contemplate or permit such sub-delegation.
5. Learned counsel relies on *Sahni Silk Mills (P) Limited and another. v. Employees’ State Insurance Corporation*, reported at (1994) 5 SCC 346 in support of the contention that such sub-delegation, unless provided for in the concerned statute, is not permissible in law.
6. The next argument advanced by the petitioner is that, in the guise of the impugned Regulation, the licensee has been conferred with

unfettered and uncanalised discretion to impose restricted drawal limits at its own whims. It is argued that no guideline for exercise of such discretion has been provided in the Regulation. On a previous challenge to such imposition of penalty by the DVC under Regulation 4.4, the WBERC, by an order dated December 11, 2020, observed that such imposition of restricted drawal upon its consumers by the DVC was not in accordance with law and was illegal and irrational.

7. In order to implement such direction, the petitioner and another similarly circumstanced consumer had filed two writ petitions, bearing WPA No.609 of 2021 and WPA No.3077 of 2011, which were disposed of by a learned Single Judge of this Court *vide* orders dated January 28, 2021 and February 12, 2021 respectively, directing the DVC to refund the amount paid by the consumer on account of restricted drawal in the mode and manner as mentioned in the said orders. It is argued that, thus, the impugned Regulation is unworkable and *ultra vires* the scheme of the Electricity Act.
8. It is contended that if such discretion is left to the Executive, the statute must lay down the guidelines for exercise of discretion by the Executive. In support of such argument, learned counsel appearing for the petitioner cites the following judgments:
 - (a) *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others*, reported at AIR 1958 SC 538;
 - (b) *S.M. Nawab Ariff v. The Corporation of Calcutta and others*, reported at 1959 SCC OnLine Cal 94;

(c) *Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi and others*, reported at (2003) 7 SCC 151.

9. Thirdly, the petitioner contends that the imposition of additional energy charge is in violation of the principles of natural justice. Apart from the levy of such charges being in the nature of penalty imposed upon the consumers, the same has civil consequences, without affording any opportunity of hearing to the consumer, which is in gross violation of the principles of natural justice.
10. The DVC, it is submitted, has an inter-State infrastructure for supplying electricity to both the states of Jharkhand and West Bengal. The Electricity Act confers specific power respectively on the Central Electricity Regulatory Commission (CERC) and the respective State Electricity Regulatory Commissions in demarcated spheres. Determination of capacity charge and energy charge is a part of the tariff determined in respect of inter-State generation and transmission of electricity, to be undertaken by the CERC. Thus, the WBERC does not have any power to levy such additional energy charges.
11. Accordingly, it is argued that the impugned Regulation ought to be struck down as violative of the principles of natural justice as well as being *de hors* the Electricity Act and constitutional provisions.
12. Consequentially, the charges for overdrawal levied by the DVC, being irrational and without any basis, ought also to be set aside.
13. Learned senior counsel for the WBERC, in support of the constitutionality of Regulation 4.4, argues that Section 61 of the

Electricity Act empowers the State Electricity Regulatory Commission to determine tariff, emphasising efficiency in electricity supply while balancing the interests of the consumers with the sustainability of the electricity supply industry. Section 181 authorizes the said Commissions to create Regulations, including those setting conditions for electricity usage and penalties for non-compliance. Regulation 4.4 falls squarely within such regulatory framework.

- 14.** It is argued by the WBERC that the said Regulation is necessary because electricity generation and consumption must be balanced in real time, as electricity cannot be economically stored on a large scale. Excess drawal beyond a prescribed limit can destabilize the grid, leading to potential failures, load-shedding or blackouts. Regulations such as the impugned one act as safety measures compelling consumers to adhere to limits, particularly during peak demand periods or times of grid stress, which ensures that grid stability is maintained, protecting the entire network from cascading failures.
- 15.** Operational flexibility and real-time decision-making are required to be vested with the licensee to deal with the dynamic processes of electricity distribution and consumption that require real-time adjustment. The licensee, being at the operational forefront, is best positioned to determine the appropriate level of restricted drawal based on real-time grid conditions. This flexibility, it is argued, is crucial for responding to unexpected demand spikes or supply constraints, ensuring grid stability and efficient distribution of electricity.

- 16.** Learned senior counsel for the WBERC next contends that the impugned Regulation provides for a preventive measure and is not punitive in nature. This is in line with the principle of proportionality where the imposition of penalties is not to punish but to protect broader public interest. Licensees are tasked with managing electricity supply and demand within their networks and the discretion granted to them is essential for maintaining operational efficiency and safety.
- 17.** The WBERC next argues that the imposition of additional charges at twice the rate of normal electricity charges for exceeding the drawal limit is not arbitrary but proportional to the harm that such action could cause and is designed to deter undesirable consumer behaviour effectively. Regulation 4.4 does not outright prohibit excess drawal but imposes a financial deterrent, allowing the consumers the choice to exceed the limit at a cost.
- 18.** It is next argued that unchecked excess drawal by some consumers can adversely affect others, leading to inequitable distribution, particularly during power shortages. Thus, Regulation 4.4 aligns with broader public interest and serves equity considerations.
- 19.** Learned senior counsel for the WBERC cites *Government of Andhra Pradesh and others v. P. Laxmi Devi (Smt)*, reported at (2008) 4 SCC 720, where it was held that as regards economic and other regulatory legislation, judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of

economic or administrative experts and has no expertise in these matters. In this age of specialisation, when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the Executive or the Legislature and to try to enforce its own views and perceptions. The said view was followed in *Vasavi Engineering College Parents Association v. State of Telangana and others*, reported at (2019) 7 SCC 172.

- 20.** Learned senior counsel for the respondent no.3-DVC contends that the concerned recital to the agreement between the petitioner and the DVC provides supply of electricity subject to availability of power. The petitioner has agreed to accept the liabilities which might accrue due to execution of the agreement for supply of power.
- 21.** Clause 3 of the agreement provides that the electrical energy supplied to the consumer by DVC shall be on three-phase, 50 cycles alternating current system at normal pressure of 132KV. Clause 24 of the agreement provides that the same would be subject to the provisions of the Electricity Act and the Regulations and the petitioner agreed to pay all charges payable in accordance with the Regulations and the schedule of charges of the DVC.
- 22.** Maintenance work was carried out by the DVC during the relevant period and the restriction of drawal so necessitated was intimated in advance (10 to 24 hours prior to the imposition thereof) to the

petitioner. Learned senior counsel for the DVC seeks to justify such overdrawal charges on the facts of the case.

- 23.** Insofar as the Regulation 4.4 is concerned, it is argued that the petitioners seek to question the executive policy behind the Regulation on the ground that it does not define restricted drawal and vests the distribution licensee with uncanalised power. However, the additional energy charge so levied is regulatory in nature, as opposed to penal.
- 24.** The load restriction in the present case was necessitated to avoid shortfall in electricity supply, disconnection of jumper in the line, snapping of conductor, failure of insulator and other technical reasons. It is argued that if flow of power is interrupted due to breakdown of the transmission line connected with the power station or due to maintenance work needed in the transmission line, the supply falls, requiring restriction of drawal. Such provision subserves supervening public equity, which prevails over private interest. It is argued that private interest has to yield when pitted against public interest, for which proposition learned senior counsel for the DVC cites *Akshay N. Patel v. Reserve Bank of India and another*, reported at (2022) 3 SCC 694.
- 25.** Learned senior counsel appearing for the DVC, by relying on the same judgment, argues that the impugned Regulation also meets the test of proportionality, legitimacy, necessity of the measure and balances fundamental rights with State aims.

- 26.** The wisdom or soundness of a policy framed by a specialised regulator cannot be the subject-matter of judicial review, when it would involve examination of the soundness of a technical policy. In support of such contention, learned senior counsel cites *Vishal Tiwari (Adani Group Investigation) v. Union of India and others*, reported at (2024) 4 SCC 115 and *Jal Mahal Resorts Private Ltd. v. K.P. Sharma and others*, reported at (2014) 8 SCC 804.
- 27.** Hence, Regulation 4.4 is contended to be an in-built safety mechanism to protect the national grid and does not offend Articles 14 and 19(1)(g) of the Constitution of India.
- 28.** It is argued by the DVC that it is no longer *res integra* that the likelihood of a provision being misused or abused cannot render the statutory provision invalid.
- 29.** Upon hearing learned counsel for the parties it transpires that there are two prongs to the attack in the present writ petition. Insofar as the challenge to the overdrawal charges imposed by the DVC for a particular period is concerned, the extant provisions of the WBERC Regulations provide a mechanism for challenge before the concerned Grievance Redressal Officer. Thus, it is beyond the domain of the Writ Court to enter into a factual assessment of the grievance of the petitioner as to whether for the relevant period, the charges levied by the DVC in terms of Regulation 4.4 were justified. Moreover, during the relevant period Regulation 4.4 was operational and, as such, the petitioner's remedy lies before the concerned Grievance Redressal

Officer for the purpose of testing whether the levy of additional charges for alleged overdrawal was justified on the facts of the case.

- 30.** Clause 3.5.1 of the WBERC (Electricity Supply Code) Regulations, 2013 provides that in case there is any dispute in respect of the billed amount, the consumer may lodge a complaint with the Grievance Redressal Officer or the Central Grievance Redressal Officer of the licensee and thereafter prefer an appeal to the Ombudsman against the order of the said Officer, if aggrieved. Thus, such component of the present challenge can only be preferred to the appropriate authorities as stipulated under Clause 3.5.1 of the 2013 Regulations and need not be gone into by the writ court.
- 31.** However, the challenge as to vires of the concerned Regulation requires consideration by this Court.
- 32.** At the outset, we find that Regulation 4.4 pertains to the regulation of tariff for electricity consumed within the state of West Bengal. The additional charge levied is on overdrawal of electricity at the consumer's end and not on the inter-state transmission of electricity. Thus, although the DVC is an inter-state operator in the field of generation and transmission of electricity, the Regulation under consideration relates to consumption of electricity within the state and, thus, it comes well within the powers of the WBERC, which is the State Commission in West Bengal, to impose such tariff within the parameters of Section 61, read with Section 181 of the Electricity Act. Hence, the challenge thrown by the petitioner on such ground cannot be accepted.

- 33.** Moving on to the other components of challenge, Regulation 4.4 of the 2011 Tariff Regulations is quoted hereinbelow:

“4.4 - If in a 15 minutes time block a consumer draws power more than the restricted drawal, if any, imposed by a licensee then the consumer will pay additional energy charge at a rate twice the applicable rate for that consumer at that time block. Such additional energy charge shall be payable in addition to the amount that is payable as energy charge for consumption of energy in that particular time block.”

- 34.** Section 61 of the Electricity Act confers power on the Appropriate Commission to specify the terms and conditions for the determination of tariff and stipulates the guidelines for doing so. On the other hand, Section 181 of the said Act empowers the State Commissions to frame Regulations consistent with the Act. Under sub-section (2), Clause (zd) thereof, the terms and conditions for determination of tariff within the state under Section 61 is to be framed by the concerned State Commission (in the present case, the WBERC). Such tariff pertains to consumption of electricity within the State of West Bengal and not to tariff levied in respect of inter-State electricity distribution and, as such, the WBERC is fully authorised under the Act to frame Regulations on such count.
- 35.** In *P. Laxmi Devi (Smt) (supra)* and in the case of *Vasavi Engineering College Parents Association (supra)*, the Supreme Court categorically laid down that the court has to exercise judicial restraint and grant

greater latitude to the legislature while adjudging the constitutionality of regulatory legislations within the domain of economic or administrative experts.

36. The challenge to the vires of Regulation 4.4 in the present case has been levelled on the ground of constitutionality and violation of the provisions of the Electricity Act itself. This Court is aware of its limitations insofar as interference on the grounds involving technical expertise and administrative prudence is concerned. However, Regulation 4.4 is *ex facie* violative of certain principles of natural justice as well as the Constitution, which do not require any technical expertise or administrative prudence to decide. The underlying principle of the restraint on Constitutional Courts in that regard is based on the principle that such courts do not have technical expertise or administrative acumen sufficient to decide issues relating to the technical or administrative soundness of a piece of legislation or delegated legislation. However, such principle does not debar such courts to enter into the arena of Constitutional principles such as proportionality, arbitrariness, legality and skewed policy decisions which are palpable and can be decided without drawing upon any technical or administrative expertise.

37. Regulation 4.4, even on a plain glance, permits arbitrary restriction by the licensee regarding drawal, without providing any guideline whatsoever as to the reasons or the period for imposition of such restriction. Nothing is enumerated in the Regulation or elsewhere in

the WBERC Regulations regarding the grounds and situations in which such a restriction can be imposed.

- 38.** As per Clause 2.1(e) of the Supply Code of 2013, “contract load” or “contracted demand” has been defined as the electrical load in Horse Power (HP) or Kilowatt (KW) or in Kilo Volt Ampere (KVA) which, in accordance with a signed contract or an agreement between a licensee or consumer, the licensee has committed to deliver and the consumer has a right to draw at the point of supply of the consumer at any or all time during the continuance of the contract or agreement.
- 39.** The agreement between the petitioner and DVC as well as all such standard agreements with industrial-level consumers contain provisions mandating the licensee, at all points of time, to deliver to the consumer the contract load, if the consumer so chooses to consume. The said mandate on the licensee, in turn, translates into a right of the consumer, at any point of time during the contract period, to be assured of getting such contract load. Additional charges are imposed on industrial or large-scale consumers for upgrading the grid to cater to their huge needs, which is mirrored in the assurance by the licensee that the contracted demand must be met, if invoked by the consumer, at all times during the tenure of the contract.
- 40.** However, Regulation 4.4 confers unbridled power on the licensee to violate such contract demand clause and, at its own whims, to arbitrarily restrict drawal even below the contract demand limit, since there is nothing in Regulation 4.4 to restrict the imposition of restricted

drawal limits up to the contract load and above. Whereas the consumer can be saddled with penalty at the rate of double the normal electricity charges for violation of the restricted drawal limit, there is no corresponding penalty on the licensee to compensate the consumer in the event it restricts drawal below the contracted demand limit. Thus, whereas the consumer is bound to pay additional charges for the contracted demand, such supply, which is guaranteed by the contract demand clause on the one hand, can be taken away on the other arbitrarily by the licensee at any given point of time during the tenure of the contract. Hence, the provisions of Regulation 4.4 operate contrary to the assurance given by the licensee to meet the contracted demand by supplying the contract load at all points of time, which is inherently unjust and self-contradictory. A licensee, at any point of time, can potentially defy the contracted demand clause merely on the pretext of imposing restricted drawal at its own whims. This creates an opportunity of unjust enrichment of the licensee and also makes the licensee the judge of its own cause, empowering it to not only flout the contracted demand limit but charge double the amount of normal electricity charges by taking undue advantage of its own wrong in whimsically and arbitrarily imposing restrict drawal limits.

- 41.** The second infirmity in Regulation 4.4 is that it grants unbridled power on the licensee to choose when and how long to impose restricted drawal, without specifying any specific ground or guideline for such imposition. Thus, we are not merely looking at a situation where the

provision is otherwise rational and within legislative domain but there can be potential abuse of the said provision, which, by itself, would not render a statutory provision invalid, but at a scenario which leaves it open, by its very nature, for the provision to be abused at every instance of its exercise. Regulation 4.4, by its very fabric, is implicitly abusive of the Constitutional principle of equality and non-discrimination by the very arbitrariness involved therein, since there is nothing in the provision to prevent the licensee from imposing such drawal limits whimsically and at the drop of a hat, even without any justification or reason whatsoever, in the absence of any guideline or framework for working the same. Under the said provision, the licensee can, without attributing any reason whatsoever and without giving a reasonable notice, has the authority to determine its own tariff by charging double the amount of electricity charges by reason of its own erroneous imposition of drawal limits.

- 42.** Hence, Regulation 4.4, in the absence of guidelines, is implicitly arbitrary and violative of Article 14 of the Constitution of India as well as all principles of natural justice. The Supreme Court as well as this Court, in *Ram Krishna Dalmia (supra)*, *S.M. Nawab Ariff (supra)* and *Krishna Mohan (P) Ltd. (supra)*, has categorically reiterated that if powers are granted to the Executive by a statute, there should be guidelines imposed for exercise of such discretion in the statute itself. In the absence of the same, the licensee is empowered to determine its own tariff, which is palpably a sub-delegation of the powers exercised

by the WBERC under Sections 61 and 181 of the Electricity Act beyond the contemplation of the statute. Such unauthorised sub-delegation itself is sufficient ground, as held in *Sahni Silk Mills (P) Limited (supra)*, to hold a provision constitutionally invalid.

- 43.** The WBERC argues that Regulation 4.4 is designed to protect the power grid from stress and destabilization. However, as per its own admission, Regulation 4.4 does not outright prohibit excess drawal at all but merely imposes a financial deterrent, left to the whims of the licensee. Hence, in a given case, a consumer is entitled to overdraw electricity to an infinite extent, thereby jeopardizing the power grid or bringing it down altogether, but be purged of such guilt by merely paying additional charges. In the process, if the grid stability is affected and even if the entire grid supply collapses, affecting the entire range of consumers being supplied through it, there is nothing in Regulation 4.4 to prevent the consumer from doing so. Thus, Regulation 4.4 does not prohibit excess drawal of electricity at all. What it does is confer unbridled power on the licensee to restrict drawal to a limit of its own choice and overcharge on such pretext. Nothing in Regulation 4.4 prevents the consumer from overdrawing to jeopardise the grid stability but it merely imposes a penal charge for doing so. The argument of the WBERC that Regulation 4.4 ensures grid stability is a myth. It may, at best, operate as a monetary deterrent which, nonetheless, permits a reckless consumer to throw grid stability to the winds and be let off by paying extra money. Hence, Regulation 4.4

cannot be construed to be a “preventive” measure to prohibit grid stability infraction but is purely punitive in nature.

- 44.** The argument of WBERC on proportionality is also misplaced. There is no proportionality in a standard and blanket doubling of the charges payable for overdrawal. In the absence of any standard of measurement of exactly how much damage is done to the grid which is attributable directly to the overdrawal of load by a particular consumer, proportionality in such imposition is a myth.
- 45.** For example, if the overdrawal is of such proportion that it is instrumental in the entire grid collapsing, the guilty consumer will get away with payment of additional charges at a standard rate of double the amount of normal charges, without any assessment of the exact quantum of damage caused. On the other hand, for mere withdrawal of an innocuous amount of extra load above the restricted limit, which does not actually jeopardize the power grid or cause any damage in any manner, a consumer can be saddled with double the electricity charges, although no harm at all has been done to the grid, simply because the licensee has arbitrarily restricted the drawal to a particular load ceiling.
- 46.** The WBERC in its own order dated December 11, 2020, annexed at pages 95 to 97 of the writ petition, categorically observed that the DVC failed to comply with its contractual obligation to supply the contracted demand load. In Clause 15.0 (d) of the ordering portion of the said judgment dated December 11, 2020, the WBERC clearly observes that in the event a shortage of power, it is the contractual obligation of DVC

to provide energy to its members even if by purchasing energy from other sources available in the grid. Thus, even in the perception of the WBERC, the regulator which has framed Regulation 4.4, it is the bounden duty of the licensee to supply the contracted demand load to the consumer at any given point of time, if necessary by purchasing energy from other sources available in the grid. Hence, the argument of the WBERC that Regulation 4.4 is intended to preserve the grid falls flat by its own logic.

- 47.** The Tariff Regulations of 2011 contemplate an entire ecosystem of tariff fixation. The contracted demand ensures supply of a minimum load as fixed by the contract at all times by the licensee and is a cardinal premise of the power supply agreement, for which the licensee charges extra amount from the consumer. If there is overdrawal beyond such limit, there is a mechanism of penalty in place in the Regulations themselves. Conversely, if the licensee fails to supply the contracted demand, it is incumbent upon the licensee to compensate the consumer by adjustment with its bills.
- 48.** Such entire ecosystem is blatantly jeopardised by Regulation 4.4, which clothes the licensee with unbridled and unfettered power to arbitrarily reduce the contracted demand by imposing drawal restrictions at any given point of time, for any indeterminate period on whatever ground it chooses, or even without citing any ground for doing so.
- 49.** In view of the above, the rights ensured to every citizen of India under Article 19(1)(g) of the Constitution of India is flouted. The very

arbitrariness implicit in Regulation 4.4 patently contravenes Article 14 of the Constitution of India as well.

- 50.** Apart from that, the absence of powers of sub-delegation within the contemplation of Sections 61 and 181 of the Electricity Act is overreached by Regulation 4.4, which sub-delegates to the licensee the power to determine its own tariff and double the same merely by regulating the drawal limits at any given point of time.
- 51.** In view of the above, this Court is of the clear opinion, based on the very nature of the impugned Regulation, that Regulation 4.4 of the WBERC (Terms and Conditions of Tariff) Regulations, 2011 is *ultra vires* the Constitution and contravenes core principles of natural justice and is violative of Articles 14 and 19 of the Constitution of India, being patently arbitrary and devoid of any guidelines for exercise of power under the said provision by the licensee.
- 52.** Accordingly, W.P.A. No.4669 of 2023 is allowed in part, thereby striking down Regulation 4.4 of the 2011 Tariff Regulations framed by the WBERC as *ultra vires* on the ground of unconstitutionality and violation of principles of natural justice as well as contravention of the parent statute under which it is framed, that is, the Electricity Act, 2003.
- 53.** However, the WBERC will be at liberty to frame appropriate fresh Regulation(s) for curbing excess drawals which might jeopardise the grid stability. While doing so,

- (a) The WBERC shall frame specific guidelines and conditions for imposition of restricted drawal by the licensee, if at all such power is conferred on the licensee.
- (b) Even in such event, the new Regulation has to ensure that the restricted limit shall not go below the contracted demand of the particular consumer.
- (c) Thirdly, at each such instance of restriction of drawal, the licensee must give sufficient notice, at least of 24 hours, to the consumer.
- (d) Fourthly, the tariff to be imposed has to be governed by specific guidelines proportionate to the damage, if any, caused to the grid, based on scientific principles, which may also be assessed subsequently before imposition of such excess penalty. While so assessing, the concerned consumer must be given a right of hearing by the licensee.
- (e) Alternatively, the WBERC might contemplate formation of a separate body of experts for grid management, which will assess the grid requirements and accordingly assess the damage caused by overdrawal beyond the restricted limit by any particular consumer at a given point of time and calculate the excess charges payable for such violation at each instance, proportionate to the damage caused.
- (f) The WBERC will also be at liberty to formulate Regulations, if it so deems fit, upon consultation with appropriate experts, and giving hearing to all stakeholders, to provide for appropriate measures to

protect grid stability, if necessary, by imposing cut-off limits beyond which no consumer can draw electricity at any given point of time, depending on the particular infrastructure and potential of the concerned grid.

(g) However, it will be the incumbent duty of the licensee, at any given point of time during subsistence of a contract, to supply the contracted demand to the consumer, if necessary, by procuring electricity from other sources within the grid. The licensee, before entering into any power supply agreement, shall assess the grid parameters and capacity for the purpose of fixing contracted demand with consumers.

(h) The new Regulation(s), if framed, shall ensure and specifically provide that at no point of time shall the drawal restriction limit go below the contracted demand in respect of any particular given consumer. In case of imposition of a blanket or general drawal limit restriction being necessary for a specific area, class or group of consumers, the said limit shall take into account the consumer having the highest contracted demand limit in that area/class/group, which shall be the standard beneath which the limit cannot be imposed.

54. However, insofar as the billing dispute raised by the petitioner herein against the DVC for alleged overdrawal, this Court does not enter into the merits of the same and it is left open to the petitioner to approach the concerned Grievance Redressal Officer or Central Grievance

Redressal Officer, as the case may be, with such billing dispute. If so approached, the said Officer shall decide the issue in accordance with law, upon giving adequate opportunity of hearing to all concerned. For such adjudication, the provisions of Regulation 4.4 shall be deemed to have been in existence during the relevant period.

- 55.** It is further clarified that the striking down of Regulation 4.4 by this order shall operate prospectively from this date and shall not affect any bills which may be raised for any billing period prior to this date. In the event the billing period for any consumer is partly exhausted as on this date, additional charges shall be levied only for instances of overdrawal till date and not beyond.
- 56.** The restricted drawal limits already imposed by the DVC and other consumers within the state of West Bengal in terms of the struck-down Regulation 4.4, if such restriction is now in force, shall stand rescinded with immediate effect.
- 57.** There will be no order as to costs.
- 58.** Urgent certified copies, if applied for, be issued to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)