**(2002) 03 PAT CK 0121**

**Patna High Court**

**Case No:** C.W.J.C. No. 13616 of 2001

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| Baleshwar Prasad | | APPELLANT |
| | Vs | |
| The Bihar State Elec. Board and Others | | RESPONDENT |

**Date of Decision:** March 13, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2002) 2 PLJR 416

**Hon'ble Judges:** R.S. Garg, J

**Bench:** Single Bench

**Advocate:** N.K. Agrawal and Mani Bhushan Kumar, for the Appellant; J.P. Shukla, for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

R.S. Garg, J.
By this petition under Article 226 of the Constitution of India the petitioner seeks to challenge the correctness of the bills for the period 5.8.2000, 1.9.2000, 3.10.2000, 3.11.2000,4.5.2000,6.6.2001 and 2.7.2001 as according to the petitioner the said bills were raised illegally on the principles of average basis violating provisions of Section 26 (6) of the Indian Electricity Act, 1910. The petitioner also challenges the bill for A.M.G. for the period 2000-2001 for 38211 units and also prays further that the respondents be directed not to charge the A.M.G. for the period of disconnection i.e. 16.11.2000 to 9.4.2001. The petitioner has also prayed that the respondents be asked not to charge the delayed payment surcharge. The facts not in dispute before me are that in the year 1963, the petitioner entered into an agreement with the Bihar State Electricity Board (hereinafter referred to as "the Board" for the sake of brevity) with a contract demand of 135 K.V.A. The said unit was closed in the year

1990-91. The said Cold storage was reconnected to energy at a reduced load of 78 HP. in the low tension category. Though according to the petitioner there were certain disputes about the load factors etc., but the Board maintains that though the petitioner was registered as a low tension unit, but the facilities available to H.T. consumer remained intact because the Cold storage was consuming more than the contract load without informing the Board and the fact later on came to the notice of the Board in view of the inspection reports dated 6.6.97 and 29.11.1997. According to the Board an electronic trivector meter was installed by the Board, the reading showed consumption of the H.T. loads and, therefore, H.T. load bills were sent and a notice was also issued to the petitioner for execution of the agreement for H.T. load. The petitioner being aggrieved by ''the action of the respondent Board filed Title Suit no. 115/97 in the Court of Subordinate Judge, Biharsharif for declaration and also prayed for temporary injunction. The petition for grant of temporary injunction was rejected and thereafter the petitioner withdrew his suit. The supply of energy was disconnected. It is not in dispute before me that on 1.2.2000 the petitioner entered into a H.T. agreement. According to the petitioner the Assistant Electrical Engineer, during the course of inspection on 2.8.2000 found that the meter was burnt and was not recording the energy consumption. The Assistant Electrical Engineer informed the higher authority for due verification. On 3.8.2000 the petitioner informed the Superintending Engineer that the meter was burnt, the information was already given to the Board and a new meter be installed. On 8.8.2000, the petitioner again wrote to the Electrical Executive Engineer, Urban Electric Supply Division, Biharsharif, Nalanda for replacement of the meter. The petitioner requested that in place of the burnt meter a new meter be installed so that the correct billing is done. The letters written by the petitioner are annexed to the petition as Annexure-4 and Annexure-5.

2. As nothing was done, on 14.8.2000 the petitioner again wrote a letter to the Electrical Executive Engineer for replacement of the meter. The petitioner also informed the authorities under Annexure-6 that the bill for the month of July for 40755 units was excessive and the bill deserved to be re-done because the average consumption of the petitioner''s unit was 25,000/-to 30,000/- per month. Vide letter dated 21.8.2000 (Annexure-7) the petitioner again made a request to the Electrical Superintending Engineer that the meter be immediately replaced and in accordance with the consumption, bills be corrected. He however also provided the consumption chart for the months of April, May and June, 2000. He also provided the consumption of the erstwhile agreement for the months of April, May and June, 1999. He submitted to the Board that in accordance with the consumption for three months of 2000, average unit consumption would be less than what is proposed to be charged. He also requested the Board that the meter be immediately replaced.

3. On 31.8.2000 vide Annexure-8 the petitioner again sent a request letter to the Board for changing the burnt meter so that the correct consumption is recorded and the petitioner is not put to a loss. On 5.9.2000 under Annexure-9, the petitioner

informed the Superintending Engineer that a meter was available in M.R.T Patna therefore a recommendation letter be sent in the name of General Manager to obtain the meter. On 6.9.2000 (Vide Annexure-B to the counter affidavit) the Executive Engineer wrote a letter to the General Manager for providing a meter. It appears that the meter was not available with the General Manager, therefore, vide Letter no. 2941 dated 13.9.2000 (Annexure-10 to the petition), the Superintending Engineer informed the petitioner that the meter was not available and the petitioner could purchase a meter in accordance with the specification provided by the Board. On 30.10.2000 vide Annexure-11 the petitioner again wrote to the Board that the meter be immediately replaced and if a particular meter of a particular company is not available then petitioner''s line be disconnected and whenever the meter is installed/replaced the connection be restored. Vide Annexure-C dated 7.11.2000 the respondent Board required the petitioner to make deposits of the arrears. Vide letter dated 17/18.11.2000 (Annexure-12 to the petition, Annexure-D to the counter affidavit) the petitioner was informed that because of the non payment of the dues supply has already been disconnected.

4. On 21.5.2001 under Annexure-12 the petitioner wrote a letter to the Superintending Engineer that the bill for A.M.G. was illegal and the petitioner could not be made answerable to make payment. On 25.6.2001 under Annexure-13, the petitioner informed the authorities that on 31.5.2001, without changing the burnt meter the supply was reconnected, though the meter was replaced on 16.6.2001 but the petitioner was making payments for month of April and May, 2001 under protest. The petitioner says that the trend of the consumption for the month of March, April, May and June, 2000 would show that the consumption was below 31,000 per month but the respondents without making a reference under 26 (6) of the Indian Electricity Act, 1910 were coercing the petitioner to make payment on the basis of average of 37275 units per month.

5. The petitioner submits that in accordance with section 26 (6) of 1910 Act, the Board is duty bound to refer the matter to the Electrical Inspector and cannot charge arbitrarily. Placing reliance on certain judgment of the Supreme Court it is also pleaded that in case of meter dispute the party not relying upon the correctness of the meter is bound to refer the matter to the Electrical Inspector. The petitioner submits that the Board be required to charge in accordance with law.

6. The Board in its counter has submitted that the petitioner did write letters to the Electrical Superintending Engineer for replacement of the meter and for correcting the bills and after appreciating the letter the bill was corrected, but because of the non availability of the meter, the meter could not be replaced. It is submitted by them that in accordance with the consumption for the month of April, May and June, 2000 the average consumption would be 30216.00 and on the basis of the consumption of April, May and June, 1999 the average monthly consumption would be 37275 units per month. According to them the Board is justified in charging

37275 units per month on the basis of average consumption for April, May and June, 1999, It is also contended that the petitioner was making a request for change of the meter, but the petitioner, who is obliged to supply a meter was not ready and willing to supply the same. It is also contended by the Board that the departmental circular issued by the Board provides for purchase of meter by the consumer to meet the exigency. According to them when the meter was not available with the Board, it was the duty of the petitioner to purchase and supply the meter to avoid the average charges. They do not dispute the fact that the supply was disconnected on 16.11.2000 for non payment of electrical dues. According to them for non payment of Rs. 1,64,562.25, the supply was disconnected after giving due registered notice to the petitioner.

7. After submission of the counter reply the petitioner filed his additional affidavit inter-alia refuting the submission of the Board that in relation to the same subject matter Title Suit no. 115 of 1997 was filed. According to him Title suit was filed but was later on withdrawn on 28.4.2000. For this submission he has relied upon his submission made in earlier C.W.J.C. No. 10884 of 1999. According to him the earlier petition was disposed of with the direction to the petitioner to file a representation to the General Manager cum-Chief Engineer and according to him, the matter was still pending. According to him in the aforesaid matter the petitioner has challenged the question of load and A.M.G. for the period 1998-99. According to him the earlier matter was in relation to the earlier agreement white the present petition is in relation to the agreement dated 1.2.2000. He submits that the earlier suit had nothing to do with the present dispute. It is also contended in the additional affidavit that Clause 16.8.of 1993 tariff is clear in itself and the mode of average billing should be applied on the basis of previous three months reading. According to him the consumption of April, May and June, 1999 could not be taken as basis for the purposes of deciding the average consumption under the new agreement. The petitioner also submitted that the meter is to be provided in accordance with law. The meter is to be provided by the Board and it is only the sweet will of the consumer to provide or not to provide the meter.

8. Placing reliance upon Rule 57 of 1956 Rules, it is also contended that the Board is duty bound to provide the meter and for their own lapse, they cannot charge the petitioner. It is also contended that in accordance with Clause 3 (c) which is subject to Clause 6 of the agreement in the even of any meter ceasing to register the correct consumption, the bill shall be on the basis of average monthly reading of the previous three months. The petitioner submits that the respondents are acting contrary to law and are charging the petitioner unnecessary.

9. A further counter affidavit has been filed by the Board to say that the petitioner was an earlier consumer, after cessation of the earlier agreement, the petitioner was re-connected at the reduced load of 78 H.P. under the low tension connection but the petitioner exploited the facilities of H.T. connection and this facility remained

intact, the petitioner''s cold storage was consuming more than the contract load. It is also the submission of the Board that as the petitioner was exploiting the facilities available to H.T. consumer, he would be deemed to be H.T. consumer. In relation to the civil suit it was contended that a suit was filed and the application for injunction was rejected. Retreating their earlier stand, it is contended by them that in accordance with Clause 16.8. of the 1993 tariff, the Board was justified in taking the average monthly consumption of April, May and June. 1999. They also submit that the provisions of the tariff would override the covenants contained in the agreement and the Board would be justified in charging the higher energy. According to them when the terms and conditions of the agreement are at variance with the terms and conditions as contained in the tariff notification, the tariff notification prevails and such agreement will be deemed to have been amended accordingly. They also submit that the present agreement was entered into between the parties on 1.2.2000, but the petitioner being an old consumer was liable to average consumption bill on the basis of April, May and June, 1999 consumption. In sum and substance they have prayed for dismissal of the petition.

10. Learned counsel for the petitioner has submitted that a fair perusal of Clause 16.8 of tariff would make it clear that the Board is entitled to charge on basis of the average consumption which is the highest, but such consumption should be under the same connection and the same agreement. It is also contended by him that in the present case undisputedly the earlier agreement came to an end and as the earlier agreement was for supply under tow tension connection and as the present is for high tension the earlier average cannot be taken for the present purpose. It is also contended by him that the Board is obliged and duty bound to supply the meter in accordance with Section 26 of the 1910 Act and Rule 57 of 1956 Rules, therefore, the Board cannot say that the petitioner was obliged and duty bound to provide the meter. He also contends that because of non supply/non replacement of the meter, the Board was trying to take advantage of its own wrong therefore the petitioner cannot be made to suffer. It is submitted by him that in accordance with Clause 16.8. of tariff, the Board would be entitled to charge on the basis of the average monthly consumption derived on the basis of the consumption of April, May and June, 2000. It is also submitted by him that the period for which the meter was not changed, the petitioner would not be liable to pay anything because on one side the Board was not changing the meter and at the same time the Board was making unreasonable and higher demands.

11. Contending contrary to the above referred argument, it is submitted by the learned counsel for the Board, that a fair perusal of Clause 16.8 of 1993 tariff would make it clear that the Board is entitled to charge on basis of the average monthly consumption of past three months, or, the preceding three months for the past year, According to them the petitioner though earlier was a low tension consumer, but as he was using the high tension facilities, for all practical purposes he would be deemed to be H.T. consumer and the Board would be justified in charging on basis

of the average monthly consumption, on basis of the April, May and June, 1999 consumption. It is also contended by them that the Board was unable to supply the meter because of shortage, therefore, the duty was cast upon the petitioner to supply the meter.

It is also contended by them that in accordance with Section 26 read with Rule 57 a consumer is obliged to supply the meter. They submit that for the period for which the meter was not working and for the period for which the supply was disconnected, the petitioner is still liable to pay in accordance with demand made by the Board.

12. I have heard the parties at length and have perused the records.

13. So far as the question of filing of the earlier suit is concerned, from the records it appears that when the earlier L.T. agreement was in force the Board raised a bill, treating the petitioner as H.T. consumer, the petitioner taking an exception to the action of the Board filed the suit, prayed for an interim injunction and after rejection of the injunction application withdrew the suit. The earlier dispute covered in the suit was for the period 1995-99. After giving absolute latitude to the Board I am unable to hold that that the earlier suit had anything to do with the present dispute. I am unable to hold that the petitioner has suppressed any material fact. The objection raised by the Electricity Board is rejected.

14. Section 26 of 1910 Act relates to meter. It says that in absence of an agreement to the contrary, the amount of energy supplied to a consumer shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter. It further provides that the licensee may require the consumer to give him security for the price of the meter. Where the consumer enters into an agreement for the hire of the meter, the licensee shall keep the meter correct and in default of his doing so, the consumer shall, for so long the default continues cease to be liable to pay for the hire of the meter. In case a meter is provided by and is the property of the consumer, the consumer shall keep the meter corrected and in default of his doing so the licensee may, after giving seven days'' notice, for so long, as default continues, cease to supply energy through the meter. Section 26 (4) of the Act provides for inspection etc. of the meter and in case the meter is found defective or found to be otherwise than correct to recover from the consumer the charges etc. Sub Section 6 of Section 26 provides that in case of difference or dispute that whether any meter is or is not correct, the matter shall be decided by an Electrical Inspector upon the application of either party 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.

15. Rule 57 of Indian Electricity Rules, 1956 provides that a meter, or maximum demand indicator or other apparatus placed upon a consumer premises in accordance with Section 26 shall be of appropriate capacity. Rule 57(3) provides that every supplier shall provide and maintain in proper condition such suitable apparatus as may be prescribed or approved by the Inspector for the examination, testing and regulation of meters used or intended to be used in connection with the supply of energy. Sub Rule 4 casts duty upon the supplier to examine and test and regulate all meters etc. before their first installation. From a juxtapose reading of Section 26 and Rule 57, it clearly appears that a heavy duty is cast upon the Board to supply a correct meter. A consumer is only given option to opt for his own meter. If the consumer does not provide his own meter then he has to pay the hire charges, but in case he provides his own meter, then the Board is not entitled to hire charges. I am unable to read anything either in Section 26 or Rule 57 which obliges a consumer to provide a meter in case of exigency. A consumer may or may not provide a meter, but the Board cannot say that neither it could supply the meter and so long the meter is not supplied, it would not supply the energy. The Electricity Board is a statutory corporation and Is bound by the statutory provisions and the Rules. When the law enjoins duty or cast an obligation upon the Board then the Board cannot be allowed to say that they would not provide a meter, but a consumer would be obliged and required to supply the meter. The submission raised by the learned counsel for the Board that the petitioner was duty bound to supply the meter being devoid of any force deserves to and is accordingly rejected.

16. For proper appreciation of further disputes, it is necessary to refer to Clause 16.8 of 1993 tariff:-

17. "16.8. Billing when meter has either gone defective or burnt or stopped:-

In the even of meter being out of order i.e. burnt/stopped or having ceased to function for any reason during any month/months, the consumptions for that month/months shall be assessed on average consumption of previous 3 months from the date of meter being out of order or the average consumption for the corresponding three months of the previous year''s consumption or the Minimum Monthly Guarantee whichever is the highest. Such consumption will be treated as actual consumption for all practical purposes until the meter is replaced/rectified. Operational surcharge, power factor surcharge and electricity duty shall be levied on consumption so calculated."

18. Clause 16.8 clearly provides that if a meter is out of order and ceases to function for any month/months the consumption in that month/months shall be assessed on average consumption of previous three months from the date of meter being out of order. On the basis of this it can safely be said that if the meter went berserk or out of order or ceased to record correctly, then the average on basis of the previous three months consumption would provide the foundation for raising the bill. In the present case, the meter went out of order in the month of July as found on 2.8.2000,

therefore the average should have been assessed on basis of the consumption of April, May and June 2000. However Clause 16.8 further provides that the average consumption for the corresponding three months of the previous years consumed or the minimum monthly guarantee may also provide a foundation and the Board would be entitled to charge on basis of the such assessment. A fair understanding of Clause 16.8 gives three options to the Board; (1) to charge on basis of the average consumption of previous three months from the date of meter being out of order, (2) on basis of the average consumption for the corresponding three months of the previous years consumption or (3) a minimum monthly guarantee whichever is the highest. There would have been no problem in the present case if the petitioner was a consumer under the said agreement in April, May and June, 1999 under the same agreement.

19. In the present case undisputedly the petitioner was not a consumer under the same agreement in April, May, June, 1999. Undisputedly in April, May, June, 1999, the petitioner was a low tension consumer for 78 HP. while under the present agreement dated 1.2.2000, the petitioner is a H.T. consumer. The earlier agreement has also come to an end and under the present agreement, the petitioner was not a consumer for April, May, June, 1999. The submission of the Board that though the petitioner was a L.T. consumer, but was exploiting the facilities of H.T. consumer under the earlier connection, therefore, the Board is entitled to use the figures of April, May and June, 1999 appear to be impressive and lucrative, but the same are devoid of any force.

20. The law on the question of contract and agreement is not governed under the whims, caprice or arbitrariness of an authority. The contracts/agreements govern the parties and their terms are have binding effect on all concerned, who are parties to the agreement/contract. In the present case undisputedly the agreement was entered into on 1.2.2000. The rights and liabilities of the parties would flow from the agreement dated 1.2.2000. What the parties did or where the parties stood before 1.2.2000 would not be material for deciding the liability of the petitioner. It will be presumed that prior to 1.2.2000, the petitioner was not a H.T. consumer under the present agreement and the agreement dated 1.2.2000 would govern the rights and liabilities of the parties from the date of its execution only. A fair perusal of Clause 16.8 would make it clear that the consumption average must be on basis of the connection under the agreement and not before that. In the present case in my considered opinion, the Board is absolutely unjustified in taking average consumption on the basis of the readings of April, May and June, 1999. Under the present agreement the petitioner was not a consumer in the year 1999, therefore if under a different agreement he has consumed the electricity, the said consumption would not provide a foundation to the Board for issuing the bills under the present agreement.

21. Learned counsel for the Board has placed his strong reliance on a Division Bench judgment of this Courtin the matter of Bihar 440 Volt Vidyut Upbhokta Sangh Vs. The Chairman, Bihar State Electricity Board and Others to contend that the Board is entitled to issue its own tariff notification. Present is not a case where the authority of the Board to make or issue the tariff notification is under challenge. In fact both the parties are relying upon Clause 16.8. to suit their own purpose.

22. At this stage, it would also be necessary to refer to Clause 3 of 1993 tariff:

3. (a) The terms and conditions for supply of electricity as also the rate of tariff as contained in the tariff schedule to the notification shall, where applicable amend, add to and/or replace the corresponding part of the previous tariff.

(b) Where the terms and conditions of the agreement entered into between the Board and its consumers are at variance with the terms and conditions as contained in this notification the latter shall prevail and such agreement will be deemed to have been amended accordingly."

23. A perusal of Clause 3 makes it clear that the terms and conditions for supply of electricity as also the rate of tariff as contained in the Tariff schedule to the notification shall where applicable amend, add to and/or replace the corresponding part of the previous tariff. It would also appear that where the terms and conditions of the agreement entered into between the Board and its consumers (emphasis supplied) are at variance with the terms and conditions as contained in the latest tariff notification, the notification shall prevail and such agreement wilt be deemed to have been amended accordingly.

The Phrase "the agreement entered into between the Board and its consumers" are the key words. It does not refer to any earlier agreement, but talks of the agreement which is in currency or in force. If the agreement in vogue is deemed to be amended according to tariff notification, then there is no scope to say that an agreement which is nonest or not in existence would also stand amended or the word "agreement" used in Clause 3 of the 1993 tariff would refer to any earlier agreement which has come to an end. The Board has to supply the electricity in accordance with the Act, the tariff and the agreement entered into between the parties. It cannot be gain said that the agreement in force would not be applicable but the Board would be entitled to take into consideration the readings which were recorded under an earlier agreement.

24.In the matter of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, , the dispute was with regard to the meter not working correctly. The Supreme Court held with reference to Section 26 (6) that the Electrical Inspector alone has jurisdiction to estimate the amount of energy supplied to the consumer or the Electrical quantity contained in the supply during the period the meter ceased to be correct. The said judgment of the Supreme Court was followed by Division Bench of this Court in the matter of Parmeshwar Kumar vs. The Bihar State Electricity

Board ( 1989 P.LJ.R. 40). The Division Bench observed that in a case when there is specific agreement that electricity supplied is to be measured by meter if the meter becomes defective, as it happened in the instant case, the charges payable by the consumer during the period had to be determined in accordance with Clause 3 (c) and Clause 6 of the agreement and the notification. The Division Bench further observed that when the Board enters into an agreement with a consumer then the agreement provides for payment of charges by reference to the tariff applicable to him. The agreement, according to the Court, therefore, determines the basis on which charges are to be paid by the consumer. According to the Division Bench there appears to be no basis for charging such a consumer at a different rate when a meter is defective than when the meter is working.

25.In the matter of Indian Aluminium Company Vs. Kerala State Electricity Board, , the petitioner-company entered into the agreement on 30th July, 1941 for supply of electricity at certain rates for a period of 34 years with an option for renewal. Later on reorganization the State of Travancore became the State of Kerala and on the establishment of the Kerala State Electricity Board the agreement was deemed to have been continued with it by virtue of Section 60. While the agreement was in force, the Board purporting to act under the Supply Act passed the Kerala State Electricity Board High Tension Tariff Order, 1969, and tried to charge on basis of the new tariff. The matter came before the Supreme Court. After hearing the parties the Supreme Court observed that Section 59 does not give a charter to the Board to enhance its charges in breach of contractual stipulation. The Board could adjust its charges under the section only in so far as the law accorded it to do so. If there was a contractual obligation which bound the Board not to charge anything more than a certain tariff the Board could not claim to override the agreement u/s 59. According to the Supreme Court it could not be said that Section 59 confers any powers on the Board to enhance the charges for supply of electricity in disregard of contractual stipulation entered into by it under Sub-Section 3 of Section 49. The Supreme Court conclusively held that neither Section 49 nor Section 59 conferred any authority on the Board to override a contractual stipulation as to rates in derogation of such contractual stipulation even if it finds that the rates stipulated in the contract are not sufficient to meet the cost of production and supply of electricity and it is incurring operational loss.

26.In the matter of Bihar State Electricity Board and others Vs. Parmeshwar Kumar Agarwala, etc. etc., confirming the judgment of this Court, the Supreme Court observed that nothing having been mentioned in Clause 11 of the agreement about any notification issued by the Board, and the agreement at hand being earlier in point of time to the impugned notification, the stipulation made in the notification can override the terms and conditions mentioned in Clauses 3 (c) and 6. The Supreme Court observed that harmonious reading of Clauses 3 (c) and 6 and 14 would not allow overriding effect of Clause 14.

27. In a recent decision Klayman Porcelains Limited Vs. Superintending Engineer, Operation, Mahabubnagar Circle, APSEB, Hyd. and another, a Division Bench of Andhra Pradesh High Court has observed that the words "In the absence of any agreement to the contrary" in Section 26 (1) refer to ascertaining of electrical quantity contained in the supply by means of correct meter and the same cannot control the right of parties in getting disputes referred to an electrical inspector under Sub-Section 6 of Section 26.

28. In the present case, the agreement was entered into between the parties on 1.2.2000 when the 1993 notification was in force. The 1993 notification provides that the terms and conditions of the agreement entered into between the Board and its consumers, if are at variance with the terms and conditions as contained in 1993 notification, the notification shall prevail and such agreement will be deemed to have been amended accordingly. In accordance with Clause 3 (b) of the notification Clause 16.8 shall take its full effect and would govern the rights of the parties. As already observed if the petitioner was a consumer under the same agreement in April, May and June, 1999, the Board would be justified in taking the average consumption for the corresponding three months of the previous year but as the petitioner was not a consumer under the same agreement for April, May and June, 1999, the Board would not be entitled to take the average consumption for the corresponding three months of the year 1999. The bill on basis of such average consumption would be bad. The same deserves to and is accordingly quashed. Ordinarily I would have remitted the matter to the Board for reconsideration, but there is no dispute before me that for the months of April, May and June, 2000 particular readings were recorded by the correct meter. On basis of the said readings for the months of April, May and June, 2000 the average monthly consumption would be 30216 units. The petitioner would be liable to pay on the basis of the previous three months average consumption.

29. The petitioner says that he is not answerable to make payment for the period for which the supply was disconnected. Ordinarily the request of the petitioner could be turned down, but in the present case what is to be seen is that the petitioner had been repeatedly asking the Board to change the burnt meter, but the Board was not right on its own duties and responsibilities. On 2.8.2000 the meter burnt, the petitioner wrote different letters to the Board for replacement of the meter and first of such letter was written on 3.8.2000. The Board in accordance with Section 26 of 1910 Act and Rule 57 of 1956 Rules was obliged to replace the meter but did not do so. The petitioner, however consumed the electricity up to 7.11.2000. In the opinion of this Court, the petitioner would be liable to pay on the basis of average monthly consumption as referred to above for the period between July to 16.11.2000 (when the line was disconnected) and thereafter he shall not be liable to pay beyond the annual minimum guarantee till his meter was replaced on 16.6.2001.

30. The Board had been raising unnecessary demands, the petitioner was protesting the same and as this Court has decided in favour of the petitioner, the Board would not be entitled to any delayed payment surcharge. The Board is required to recalculate the entire amount in light of the aforesaid direction and require the petitioner to pay the balance amount if any, without any delayed payment surcharge. In case it is found that the petitioner has made excessive deposits, the Board shall be duty bound to refund the excess charged amount to the petitioner or give credit of the same to the petitioner in forthcoming bill''s. The petition is allowed to the extent indicated above.