

(2010) 02 CAL CK 0011

Calcutta High Court (Port Blair Bench)

Case No: Writ Petition No"s. 143, 144, 146, 148, 195, 218, 315, 348, 356, 357, 358, 373, 374, 379, 403, 404, 406, 409, 411, 429, 432, 437, 440, 448, 449, 454, 455, 483, 485, 498, 499, 500, 501, 506, 541, 552, 586, 595, 596, 608, 610, 625, 654, 665, 694, 695, 699,

Shri Nikhil Mazumdar and
Others

APPELLANT

Vs

The Superintending Engineer
and Others etc. etc.
 Shri
Ramaswamy Vs The Lieutenant
Governor and Others

RESPONDENT

Date of Decision: Feb. 26, 2010

Acts Referred:

- Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 - Regulation 141, 38, 38(1)
- Commonwealth Immigrants Act, 1962 - Section 4, 4A
- Commonwealth Immigrants Act, 1968 - Section 2(1), 2(2)
- Companies Act, 1956 - Section 630
- Constitution of India, 1950 - Article 14, 162, 18(1), 21, 240
- Electric Lighting (Clauses) Act, 1899 - Section 27, 27(1), 30(1)
- Electricity (Supply) Act, 1948 - Section 69(1)
- Electricity Act, 1910 - Section 12, 13, 14, 15, 16
- Electricity Act, 2003 - Section 1, 14, 15, 176(1), 176(2)
- Land Acquisition Act, 1894 - Section 5(A)
- Licensee Rules, 2006 - Rule 2(1)
- Minimum Wages Act, 1948 - Section 20(1), 20(2)
- Solicitors Act, 1957 - Section 41(1)
- Transfer of Property Act, 1882 - Section 52
- Works of Licensees Rules, 2006 - Rule 1, 2, 2(1), 3, 3(1)

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: U. Kirtania, in W.P. Nos. 357, 358, 374, 379, 403, 404, 411, 432, 437, 440, 454, 455, 748 of 2010, A.S. Zinu, in W.P. No. 218 of 2010, M.P. Kamaraj, in W.P. Nos. 406, 498, 499, 500, 501, 506, 541, 586, 595, 596, 610, 830 of 2010, C.S. Yasir, in W.P. Nos. 143, 144, 146, 195, 348, 373, 483, 485, 552, 665, 738, 750, 768, 904 of 2010, M. Siddique, in W.P. Nos. 429, 625, 654, 1456, 1474, 1476 of 2010, S. Ajith Prasad, in W.P. Nos. 694, 695, 699, 700, 703, 715, 716, 722 and 723 of 2010 and T.K. Das, W.P. No. 810 of 2010, for the Appellant; Krishna Rao, for the Respondent

Judgement

Pratap Kumar Ray, J.

All the aforesaid writ applications have been taken up for analogous hearing as the facts and the question of law involved are identical. Heard the learned advocates appearing for the respective parties of the respective writ applications.

2. The fact of the respective writ applications filed by the respective writ petitioners are identical. Prayer has been made in the writ application for issuance of a Writ in the nature of Mandamus directing the respondents, the Superintending Engineer, Electricity Department, Port Blair and other officers of the Electricity Department, who are parties in the proceeding, to provide electricity connection to the premises constructed by the respective writ petitioners on the Government revenue land encroaching the same at different years prior to the year April, 1993 but after the year 1978.

3. It is the contention in all writ applications that, even if the writ petitioners are unauthorized occupier of the Government revenue land encroaching it, they are entitled to have supply of electricity in terms of Section 43 of the Electricity Act, 2003, on the reasoning that they are occupier of the premises in the angle of the meaning of the word "occupier" in terms of the Section 43 of the said Act defined by the Division Bench of the High Court at Calcutta, Circuit Bench, Andaman and Nicobar Islands, Port Blair by order dated 21.02.2008 in MAT No. 031 of 2007 under the cause title the Lieutenant Governor and Ors. v. Shri Rajaratnam and by order dated 31.03.2009 in MAT No. 029 of 2009 under the cause title Smti Mahamaya Biswas v. Lieutenant Governor and Ors. Beside such another reason has been assigned to have the supply of electricity on the basis of a Press Note issued by the Superintending Engineer, Electricity Department, Andaman and Nicobar Administration whereby and whereunder on the basis of approval accorded on 11.03.2003 by the Ministry of Home Affairs, permanent electric connection for domestic use were directed to be provided to the families who have encroached on Government Revenue land after 1978 but prior to April, 1993. It is the common cause of the respective writ petitioners that they are the encroachers of the Government revenue land prior to April, 1993 but after 1978 i.e. the period which was the subject matter of "Press Note" to provide permanent electric connection for domestic use. It has been urged further that as right to shelter under Article 21 of

Constitution of India is available to them, as a consequential effect, they are entitled to get electricity, irrespective of their status as unauthorized occupier/encroacher of land.

4. These writ applications have been opposed by the respondents by filing a short affidavit in opposition in one matter being WP No. 356 of 2010 and the same would be considered as opposition in respect of all other writ petitions.

5. The Judgments and orders passed in MAT No. 031 of 2007 The Lieutenant Governor and Ors. v. Shri Rajaratnam on 21.02.2008 and in MAT No. 029 of 2009 with can No. 075 of 2009 on 31.03.2009 are read as such

In The High Court at Calcutta

Civil Appellate Jurisdiction

Circuit Bench at Port Blair

MAT NO. 031 OF 2007

The Lieutenant Governor and Ors. v. Shri Rajaratnam

Mr. H.R. Bahadur ... for the appellants

Mr. A.K. Chakraborty ... for the respondents

February 21, 2008

This appeal is against an order dated 30.8.2007 of the learned Single Judge passed in WP No. 210 of 2007 Shri Rajatnam v. The Lieutenant Governor and Ors.

By the impugned order, the learned Single Judge directed the appellants-authorities being the respondents in the writ petition, to supply electricity to the premises of the writ petitioner within two weeks from the date of the petitioner making security deposit.

From the order under appeal it appears that Counsel appearing on behalf of the appellant authorities before the learned Single Judge has submitted that the Administration would provide electricity to the premises of the petitioner subject to compliance by the petitioner of the requisite formalities for supply of electricity. Counsel for the writ petitioner had submitted that the petitioner had duly complied with all the formalities except for deposit of security, the amount of which had to be fixed by the Superintending Engineer.

Mr. Bahadur appearing on behalf of the appellants submitted that the petitioner had applied for supply of electricity pursuant to a Press Note, in terms of which, electricity connection for domestic use was to be provided to those families which had encroached on Govt. revenue land after 1978 but prior to April, 1993.

Section 43 of the Electricity Act 2003 provides as follows;

43. Duty to supply on request - (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity of 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;

(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 as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the 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.

In view of Section 43 read with the second and third proviso to Section 14 of the Electricity Act, 2003, the Appellant, Administration, is obliged to supply electricity on the application of the owner or the occupier of the premises, subject however to payment by the applicant, of the charges for supply of electricity including security deposit.

The distinction sought to be made by the Administration, in the matter of supply of electricity between the encroachers who settled before April 1993 and the encroachers who settled after April, 1993 is discriminatory and, in any case contrary to the statutory provisions of the Electricity Act, 2003. Electricity is a basic amenity of living, of which a person cannot be deprived, provided he pays the legitimate costs and charges for supply of electricity.

The Administration is obliged to supply electricity to all occupiers. It is disputed that the Respondent has, for several years, been in occupation of the premises in question. No steps have been taken to evict the respondent. Once occupation is established, the tenure of the occupation is immaterial.

The discrimination sought to be made between two groups of occupiers cannot be sustained. The learned Single Judge rightly directed supply of electricity to the

respondent subject to payment of security deposit. The order impugned does not call for any interference by this Court.

If the respondent pays the costs and charges and also the security deposit as calculated by the Superintending Engineer, electricity shall be supplied within the time stipulated by the learned Single Judge by the order dated 30.08.2007.

It is, however, clarified that supply of electricity will not create any equity, right, title or interest in favour of the respondent in respect of the premises in question.

In The High Court at Calcutta

Civil Appellate Jurisdiction

Circuit Bench at Port Blair

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MAT No. 029 of 2009 with CAN No. 075 of 2009

Smt. Mahamaya Biswas v. The Lieutenant Governor and Ors.

For the appellant : Mr. K. Jayapal

For the respondents : Mr. S.K. Mandal

March 31, 2009

The appellant had instituted WP No. 193 of 2008 seeking a direction on the licensee under the Electricity Act of 2003 for expeditious action in providing an electricity connection to the appellant. Such petition was dismissed on March 13, 2009 on the twin grounds that the point was litigated upon and the appellant's claim had been rejected by the Court; and, that the appellant was in wrongful possession of the property and could not claim electricity thereat as a matter of right.

It is the order of March 13, 2009 which has been carried in this appeal.

It is not in dispute that the appellant had instituted an earlier petition and the same was dismissed on September 25, 2007 on the appreciation that the appellant was an illegal occupant and had encroached onto government or government department land. The order of dismissal was unsuccessfully challenged in MAT No. 9 of 2008. The appellate order of April 1, 2008 was made the subject matter of a review application by the appellant herein in RVW No. 12 of 2008. The Division Bench found that there was no scope for review of the appellate order of April 1, 2008 but the petition was disposed of with the following observation:

However, the petitioner will be at liberty to file a fresh writ application, if so advised, challenging the new cause of action, as submitted by the learned advocate for the petitioner.

Clearly, the Division Bench granted leave to the appellant herein to institute a new writ petition on the appreciation of a subsequent cause of action having accrued in the appellant's favour. It is such writ petition which was dismissed by the order impugned in the present proceedings.

Notwithstanding the fact that the earlier proceeding that culminated in the Division Bench order of dismissal of April 01, 2008 had attained finality, the leave given by the subsequent Division Bench order in the review petition had entitled to appellant canvass the cause afresh. Findings on fact in any concluded proceedings may be binding and the parties to the lis may not re-agitate the issues upon such questions of fact having attained finality. However, a legal finding will not result in finality on such score, particularly where the parties to the lis are permitted to agitate the same afresh.

Section 43 of the Electricity Act of 2003 does not make any distinction between a lawful occupier and an occupier who has no apparent title to remain in occupation. There is a departure from the Indian Electricity Act, 1910 that has been made by the legislature while enacting the 2003 Act. For a licensee receiving an application for a new electricity connection, it is only incumbent on the licensee to assess whether the applicant is in occupation of the premises where the supply is sought and the licensee has no authority to adjudicate upon the title of the applicant to the land in question.

In view of Section 43 of the 2003 Act, an occupier, meaning thereby any person who is in occupation of the land whereat the electricity supply is sought, is entitled to the supply of electrical energy merely by virtue of his occupation of the relevant premises. Accordingly, the appellant who is in admitted occupation of the premises will be entitled to electricity at such premises irrespective of whether he is an encroacher or otherwise not lawfully entitled to the property.

The respondents submit that the petitioner has encroached on land allotted to the police department and no lenience should be shown to him. The respondents submit that though the police department was added as a party to the writ petition, it has not been impleaded in the appeal. Even if the police department is added, served and heard, it would only be delaying the inevitable. For, assuming that the petitioner has no title to show for his occupation of the property, the mere fact that he is in occupation thereof would entitle him to receive electricity thereat.

This order will not create any equity in favour of the appellant and appellant may not cite this order to obtain any advantage in the civil suit that the appellant has instituted seeking a declaration of the appellant's title and consequential injunction restraining the Administration from dispossessing the appellant from the land in question.

The order dated March 13, 2009 is set aside and the licensee is directed to provide a new electricity connection, subject to the appellant complying with all requisite

formalities, within a period of four weeks from the date of last compliance.

MAT No. 029 and the connected application being CAN No. 075 of 2009 are disposed of without any order as to costs.

Urgent photostat certified copies of this Judgment be supplied to the parties, if applied for, subject to compliance with requisite formalities.

6. Learned advocates appeared for respective petitioners further have argued about the right to shelter as well as right to consume electricity, on relying the judgment of Division Bench of Calcutta High Court passed in the case of [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#), .

7. These writ applications have been opposed by the respondents by denying the factual foundation, on legal questions involved. It is the stand of the respondents that Section 43 of the Electricity Act, 2003 never provides any right to an unauthorized occupier/encroacher of the Government revenue land and the word "occupier" appears in the Section 43 of the said Act always to be construed as "lawful occupier".

8. It is the contention that under the Works of Licensees Rules, 2006 hereinafter referred to as Rule 2006 for brevity as framed on exercise of the power conferred by Clause (e) of Sub-section (2) of Section 176 and Sub-section (2) of Section 67 of the Electricity Act, 2003 by the Central Government, the Licensee under Rule 3(1)(a) is not lawfully entitled to carry out any works, relating to supply of electric supply line in, through, or against, any building or on, over or under any land unless there is a prior consent of the owner or occupier of any building or land.

9. It is further contended that the word "occupier" has been defined u/s 2 of the said Rules as a person in lawful occupation of any building or land. In reply to the contention made and the documents annexed in the writ application to this effect that earlier Division Bench of this Court, in the aforesaid Mandamus Appeals namely MAT No. 031 of 2007 and MAT No. 029 of 2009, though held that right to consume electricity under the Electricity Act, 2003 is a consequential right attached with the right to shelter, a fundamental right, and that even an "unauthorized occupier" is legally entitled to compel the Transmission/distribution Licensee to supply electricity in terms of Section 43 of the said Act, but unfortunately the judgment of another Division Bench dated 01.04.2008 passed in MAT No. 009 of 2008 in the case of Smti Mahamaya Biswas v. The Lieutenant Governor, Andaman and Nicobar Islands, Port Blair and Ors., whereby said Appeal Court held that u/s 43 of the Indian Electricity Act, 2003, meaning of the word, "occupier" can not be read as "illegal occupier" and as such, such illegal occupier has no legal right to seek a writ of Mandamus commanding the Electricity Authority to provide electricity supply line, was not referred to and/or produced before the Division Bench in MAT No. 029 of 2009 resulting a contrary order.

10. It has been further contended that the judgment of the earlier Division Bench dated 01.04.2008 in MAT No. 009 2008 whereby the judgment dated 25.09.2007 delivered by the learned Single Judge in WP No. 141 of 2007 was confirmed, was further tested in Review application moved by the writ petitioner-appellant Smti Mahamaya Biswas in Review No. 12 of 2008 unsuccessfully and suffered the order dated 09.07.2008 passed by another Division Bench of this High Court. It is the submission made that had there been reference of those orders of the said Division Bench, passed in MAT No. 09 of 2008 surely, there would have been different order rejecting the prayer of respondents/applicants therein.

11. It has been further contended that the earlier two "Division Bench" who held that word "occupier" also includes the "unauthorized occupier" and thereby passed an order entitling encroachers of Government revenue land, a right to have the electricity in their unauthorized premises had no occasion to deal with the provision putting an embargo to the Licensee to provide electricity in terms of the Works of Licensees Rules, 2006, wherein, under the definition clause, "occupier" has been defined as "a person in lawful occupation of building or land" and under Rules 3(1)(a) of the said Rule, such lawful occupier only is legally entitled to give the consent for laying down the electric supply line to the concerned land or building. It is submitted that unfortunately it was not referred by the learned advocate appeared in those two matters, and it was also not considered by the Court while passing the judgment aforesaid. As a result, the finding of the Court in those Mandamus Appeals that unauthorized occupants are also entitle to have the supply of electricity u/s 43 of the said Act practically became a decision by non-addressing the effect of the statutory provision of the said Rule, particularly the embargo clause under Rule 3(A).

12. It is further contended that similarly in the Division Bench wherein MAT No. 392 of 2007 was heard and a judgment delivered on 10.01.2008, the concerned Rule was not placed for consideration. Said case is reported in [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#) . It is further contended that the question whether view of case [Chameli Singh and others etc. Vs. State of U.P. and another](#) , could be applicable due to statutory Rule 2006 aforesaid was neither addressed nor argued in the case Amarendra Singh (Supra),

13. Judgment of Amarendra Singh (supra) read such:

This appeal has been preferred assailing the judgment and order dated 9th January, 2007 whereby and whereunder the learned single Judge dismissed the writ petition being WP No. 2351(W) of 2006 (reported in [Amarendra Singh Vs. CESC Limited and Others](#), filed on behalf of the appellant herein on the ground that the writ petitioner did not lawfully enter into the portion of the premises in question. The learned Counsel representing the appellant invited our attention to various documents included in the paper book.

2. In scrutinizing those documents, we find that the Kolkata Municipal Corporation authorities realized rent from the appellant accepting as occupier in respect of portion of the premises in question and the appellant although has been occupying the portion of the premises in question for a considerable period, neither any objection was ever raised nor any proceeding was initiated by or at the instance of the respondents challenging the authority of the said appellant to occupy the said premises. In view of the provisions in Section 43 of the Electricity at the occupied portion of the premises in question.

3. The legality and/or validity of the occupation of the premises in question by the appellant can be decided in the Civil Court but that will not prevent the said appellant from enjoying the benefit of electric connection.

4. The Supreme Court in the case of [Chameli Singh and others etc. Vs. State of U.P. and another](#), discussed the components of right to live and specifically observed that right to life includes the right to live with human dignity. In the aforesaid judgment, Hon'ble Supreme Court specifically observed that right to live guaranteed in any civilized society implies the right to shelter and while discussing the right to shelter, the Hon'ble Supreme Court also held that the same includes electricity which is undisputedly, an essential service to the shelter for a human being. The relevant portions from the aforesaid decision of the Supreme Court are set out hereunder:

7. In [State of Karnataka and others Vs. Narasimhamurthy and others](#), this Court held that right to shelter is a fundamental right under Article 18(1) of the Constitution....

8. ... right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation....

5. In the aforesaid circumstances, request for supply of electricity at the premises in question occupied by the appellant should not be refused.

6. For the reasons discussed herein above, we are not inclined to approve the judgment and order under appeal and the same is, therefore, set aside.

7. Mr. Mukherjee, learned Counsel representing the C.E.S.C. Ltd., authorities submits that the son of the appellant herein is also residing at the portion of the said premises in question and has already deposited the requisite amount in compliance with the direction of the C.E.S.E Ltd. Mr.Mukherjee further submits that subject to completion of certain minor formalities, supply will be given to the said son of the appellant herein viz. Utkarsh Singh, wherefrom electricity will be supplied to the appellant after installation of the separate meter. Mr.Mukherjee also submits that due to the objection raised by the other occupants, the supply could not be effected

to Utkarsh Singh in the earlier occasion.

8. Mr. Saptanghsu Basu, learned Counsel representing the respondents No. 11 to 14 submits that supply can be given at the premises in question under occupation of the appellant herein without prejudice to any right of his clients or creating any right in favour of the appellant.

9. Considering the aforesaid submissions, we direct the concerned authorities of the C.E.S.C Ltd. to take necessary steps to supply electricity at the portion of the premises under occupation of the appellant without any further delay but positively within a period of three days from the date of completion of necessary formalities by the appellant herein. However, we make it clear that supply of electricity to the appellant at the portion of the premises in question will not confer any right in his favour or the same will not prejudice the rights or contentions of the other respondents under any circumstances.

10. Mr. Basu, learned Counsel of the respondents No. 11 to 14 also submits that the appellant herein may change the user of the portion of the premises in question in connivance with other interested persons. We are, however, not concerned with the aforesaid issue at this stage and the aforesaid respondents will be at liberty to take necessary steps at the appropriate stage in accordance with law. We also make it clear that we have not decided the right of the appellant herein to occupy the portion of the premises in question in the present proceeding and the same should be decided by the appropriate Civil Court in an appropriate proceeding.

11. Needless to mention that the competent authority of the C.E.S.C. Ltd. will be at liberty to request the Officer-in-charge of the local police station to provide necessary police assistance for the purpose of effecting supply of electricity at the portion of the premises in question in terms of this order and if such request is made, then the Officer-in-charge of the concerned police station shall provide necessary assistance without any further delay.

12. With the aforesaid observations and directions, this appeal stands allowed. There will be, however, no order as to costs.

14. Having regard to the rival contentions of the parties, now issues involved herein in the respective writ petitions, could be divided into three major points as follows:

Point I: Whether unauthorized occupiers, encroachers of any premises and squatters of any premises are legally entitled to file an application u/s 43 of the Electricity Act, 2003 claiming status as "occupier" and thereby may seek supply of electricity in the premises as constructed on encroaching the land; and, whether under the Works of Licensees Rules, 2006, the Distribution Licensee lawfully can provide electricity supply line in due discharge of their duties and what is meaning of word "occupier" in said Act on reflection of Rule 2006?

Point II: Whether right to have "electricity" under the ambit of Article 21 of the Constitution of India by including such right within the derived right "right to shelter" under Article 21 of the Constitution of India could be available to trespasser and unauthorized occupier; and, whether right to shelter a derived/emanated fundamental right could be extended to the unauthorized occupants, squatters, encroachers of any land or premises to provide as a consequential relief to supply electricity, on breach of statutory provisions under the Electricity Act, 2003 and the Works of Licensees Rules, 2006 as well as on public interest.?

Point - III Whether the decision of the Central Government communicated vide letter No. U.13034/3/2003-ANL dated 17.01.2003 and vide letter No. 13034/3/2003-ANL 11.03.2003 respectively by the Under Secretary to the Government of India according sanction of electricity connections to the families who have encroached on Government revenue land in Andaman and Nicobar islands during the period after 1978 but prior to April 1993 and consequential Press Note issued by the Superintending Engineer, Office of the Electricity Department of Andaman and Nicobar Islands accepting such decision of the Central Government could be given effect to within the framework of The Electricity Act, 2003 read with the Works of Licensees Rules, 2006 and the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 read with Andaman and Nicobar Islands Land Revenue and Land Reforms Rules, 1968 and thereby any direction could be passed by the Writ Court directing the respondents concerned to consider the respective applications of the respective writ petitioners on the basis of the Guidelines framed by the Central Government while according sanction to supply the electricity on identifying their eligibility in terms of the Press Note and the conditions stipulated in Government decision by making proper investigation of date of encroachment of the government revenue land?

15. The major point No. I as framed requires analysis/scrutiny of the Electricity Act, 2003 and the Works of Licensees Rules, 2006, for ascertaining the real meaning of the word "occupier" as legislatures intended to u/s 43 of the Electricity Act, 2003, on taking note of the definition of the word "occupier" appearing in the said Rules, 2006, particularly Rule 1, 2, and 3(1)(a) of said rule and Section 43 of said Act read with Section 185 Sub-section (1)(2) under the heading Repeal and Saving of the Electricity Act, 2003. Those are set out herein below:

The Electricity Act, 2003

43. Duty to supply on request - (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity of 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;

(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 as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the 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.

Section 185 Repeal and Saving - (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in Sections 12 - 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under Sections 67 - 69 of this Act are made.

(c) The Indian Electricity Rules, 1956 made u/s 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations u/s 53 of this Act are made;

(d) All rules made under Sub-section (1) of Section 69 of the Electricity (supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) All directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply

for the period for which such directions were issued by the State Government.

The Works of Licensees Rules, 2006

In exercise of the powers conferred by Clause (e) of Sub-section (2) of Section 176 read with Sub-section (92) of Section 67 of the Electricity Act, 2003 (36 of 2003), the Central Government hereby makes the following rules regarding the works of licensees, namely:

1. Short title and commencement - (1) These rules may be called the Works of Licensees Rules, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions - (1) In these rules, unless the context otherwise requires,

(a) "The Act" means the Electricity Act, 2003.

(b) "Occupier" of any building or land means a person in lawful occupation of that building or land.

(2) All other words and expression used herein and not defined in these rules, shall have the meanings respectively assigned to them in the Act.

3. Licensee to carryout work - (1) A licensee may

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, where over or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

16. So far as the definition of the word "occupier" appearing in the said Rules of 2006, there is no problem to identify the meaning of word "occupier" as, under the definition clause of Rule (2), "occupier" has been defined as a person in lawful occupation and under Rule 3(1)(a), the licensee is debarred to lay down any electric supply line in any land or premises without consent of the owner or lawful occupier of the concerned building or land. Hence, under the said Rules, 2006, the Transmission/distribution Licensee u/s 14(a) of the said Electricity Act, 2003, which, in the instant case, is the Central Government so far as the Andaman and Nicobar Islands is concerned, on application of 3rd proviso of Section 14, is not entitled to lay down or place any electric supply line or, in, or against, any building, or on, over or under any land without consent of the owner or occupier [Word "occupier" is to be read as "lawful occupier" having regard to the definition under Rule 2(1)(b)] of any building or land.

17. In the instant case when admittedly all the writ petitioners of respective writ applications have admitted the fact that they are encroachers of the government revenue land and, as such, they are not lawful occupier of the government revenue

land, hence the licensee under the provision of Works of Licensees Rules, 2006, is not legally entitled and responsible to carryout the works of laying down electric supply line to the premises of the writ petitioners who are unlawful occupiers of land which belongs to the owner - the Central Government.

18. Under the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966, Regulation 38(1) under Chapter V, stipulates that all lands in the Union Territory of Andaman and Nicobar Islands is vested absolutely in the Government and, save, as provided by or under that Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner. Regulation 38(1) reads such

38. (1) All land in the Union Territory of Andaman and Nicobar Islands is vested absolutely in the Government and, save, as provided by or under this Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner whatsoever except by a conveyance executed by, or under the authority of, the Government.

19. Under Chapter XIII Regulation 141, there are four types of tenants as prescribed and such tenancy right over the government land is created by allotment order and making necessary instrument thereof. The different types of tenants under Regulation 141 reads such

141. There shall be the following classes of tenants, namely;

(i) Occupancy tenants;

(ii) Non-occupancy tenants;

(iii) Grantees, and; and

(iv) Licensees

20. Having regard to the said provisions of the Land Regulation, the writ petitioners are not at all the tenant on the government revenue land and they have also admitted in the writ applications that they are encroachers of the government revenue land. Hence, having regard to the provision of Rules, 2006 as referred to and discussed, the Transmission/distribution Licencee is not legally responsible and have no duty to carry out works on the encroached land and to the premises of writ petitioners who allegedly constructed house therein for supply of electricity laying down the electric supply line.

21. What would be the meaning of word "Occupier" u/s 43 of the Electricity Act, 2003 now is being considered

22. So far as the Section 43 of the Electricity Act, 2003 is concerned, it appears that, under the Electricity Act, 2003, the word "occupier" has not been defined. Now the question for adjudication is what would be the meaning of the word "occupier" in terms of Section 43 and more precisely whether all the occupiers including unauthorized occupiers, encroachers, squatters as the case may be, could be considered as "occupier".

23. Before making any finding, the judgment of the Apex Court and the English Court with reference to the meaning of the word "occupier", whether includes unlawful occupier first to be considered. In the case of [K.M. Mathew and Another Vs. Hamsa Haji and Others](#), with reference to the question to render Protection u/s 7(D) of the Kerala Land Reforms Act, 1963, wherein there is a provision that a person continuously in occupation over the concerned land for a specified period as stipulated therein would be protected by deeming him as tenant, was answered by interpreting the word "occupation" whether could be interpreted as only "lawful occupation". An argument advanced in that case that, in the statute, since the word "occupation" was not defined, it could be considered as "unlawful occupation" also. The Apex Court rejected such contention by holding, inter alia, that the protection u/s 7(D) of the said Act could be available only to the persons who were in "lawful occupation" and a trespasser upon lands belonging to others and whose occupation was unlawful in its origin was not entitled to get any benefit of protection. The Section 7(D) of Kerala Land Reforms Act, 1963 reads such

7-D. Certain persons occupying private forests or unsurveyed lands to be deemed tenants.- Notwithstanding anything to the contrary contained in Section 52 or any other provision of the Transfer of Property Act, 1882, or any other law, or in any contract, custom or usage, or in any judgment, decree or order of Court, any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another situate in Malabar, to which the provisions of the Madras Preservation of Private Forests Act, 1949 (27 of 1949), were in application on the 11th day of April, 1955 or which was unsurveyed on that date, shall be deemed to be a tenant if he or his predecessor-in-interest was continuously in occupation of such land for not less than two years within a period of twenty years immediately preceding the 11th day of April, 1967.

24. The findings of the Apex Court in paragraph 5 of the said report reads such

5. On a careful scrutiny of the aforesaid provisions, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bonafide believed the lands to be government's lands of which they could later seek assignment or had taken the lands on lease from persons whom they bonafide believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a leasehold right. It was not

within the contemplation of the legislature to confer the benefit of protection on persons who had willfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. The expression "in occupation" occurring in Section 7-D must be construed as meaning "in lawful occupation."

25. Similar question was considered by the English Court about the meaning of the word "occupier" as appeared in Electric Lighting (Clauses) Act 1899, Schedule Section 27(1). The relevant words of Section 27(1) of the Schedule to the Electric Lighting (Clauses) Act, 1899 reads such

The undertakers (i.e. the Electricity Authority] shall, upon being required to do so by the owner or occupier of any premises... give and continue to give a supply of energy for those premises....

26. In that statute, the word "occupier" was also not defined. An argument advanced that the word "occupier" did not necessarily mean and was not confined to a lawful occupier. It was further contended that it had wide meaning which includes a trespasser on the principle that a trespasser had a right of possession against the whole world except the true owner and accepting that a plaintiff therein a squatter, was a trespasser, nonetheless, he had that right of possession and the word "occupier" in its ordinary sense, was wide enough to include a trespasser and so a squatter. Rejecting that argument Dunn J in the case *O Woodcock and Anr. v. South Western Electricity Board* reported in 1975 (2) All ER 545 held that "the word "occupier" means a lawful occupier and an unauthorized occupier, a trespasser, squatter is not entitled to have the supply of electricity" and on that interpretation injunction application was dismissed whereby the plaintiff squatter prayed for mandatory order of reconnection of supply line against the Electricity authority who disconnected the supply line on the ground that the plaintiff was a squatter/unauthorized occupant.

27. The relevant portion of the said report for adjudication of this case is profitable as in that case the views expressed by Lord Denning M.R with reference to the question of grant of any relief to the person who were guilty of an offence and the statutory interpretation that wrongdoers would not be entitled to get any favour by construing statute unless statute impelled that construction was referred to. The same is quoted herein below.

Counsel for the defendants submitted that the word "occupier" in the 1899 Act meant "lawful occupier". He drew my attention to the duty of electricity authorities to give and continue to give a supply of electricity, and he submitted that if after having given the supply the board subsequently discovered that the applicant was not a lawful occupier, then there was no duty on the board to continue the supply. He drew my attention to a number of sections of the Act which in his submission supported the construction of Section 27(1), that the word "occupier" was confined to "lawful occupier". He also drew my attention to Section 30(1) of the 1899 Act

which provides for a provision was inconsistent with unlawful occupiers or wrongdoers being entitled to receive a supply of electricity, because wrongdoers should not be given rights by law to institute prosecutions for the recovery of a statutory penalty. Counsel told me that it was not the practice of the electricity boards to take sides in a dispute between landlords and tenants or owners and occupiers as to their rights on premises. He said that it was only in cases like the present where it was conceded that the occupation of the premises was unlawful that electricity boards took on themselves to disconnect the supply.

Counsel for the defendants also submitted that if the occupation constituted a criminal or quasi-criminal offence, then it was impossible for such an occupier to acquire any legal rights. He relied for that submission on *Glamorgan Country Council v. Carter*. Therefore he submitted in construing the word "occupier" in this particular section that word must mean a lawful occupier to the exclusion of an unlawful occupier in the sense of an occupier who had committed a criminal or quasi-criminal offence.

Counsel also submitted that the courts should not construe statutes so as to give legal rights to wrongdoers unless the words of the statute impelled that construction. He relied for that submission on *Adlam V. The Law Society*. He relied particularly in support of this submission on *McPhail V. persons, names unknown*. That was case concerned squatters. It was a case in which there had been an order for possession of the premises on which they were squatting and they had appealed, asking for a stay of execution.

Counsel for the defendants relied principally on the distinction that was drawn in that case by Lord Denning MR between the legal position of a squatter and that of a tenant who was holding over at the termination of tenancy. In relation to the position of a squatter Lord Denning MR said.

The squatters were themselves guilty of the offence of forcible entry contrary to the statute of 1381 (i.e. the Forcible Entry Act). When they broke in, they entered "with strong hand" which the statute forbids. They were not only guilty of criminal offence. They were guilty of a civil wrong. They were trespassers when they entered, and the continued to be trespassers so long as they remained there. The owner never acquiesced in the presence there.

Then in relation to the position of tenants Lord Denning MR Said.

I must point out, however, that I have referred so far only to squatters who enter without any colour of title at all. It is different with a tenant who holds over after his term has come to an end or after he has been given notice to quit. His possession was lawful in its inception. Even after the tenancy is determined, he still has possession.

Counsel for the defendants submitted that a squatter cannot come to court to ask for equitable remedy as these squatters do because he himself is a civil wrongdoer. He went on to submit that a person in that situation was not an occupier within the meaning of Section 27 of the 1899 Act and was not entitled to electricity because he himself did not come to court seeking an equitable remedy with clean hands.

Counsel for the plaintiffs submitted that the passages from the judgment of Lord Denning MR which I have just read were not necessary for the decision of McPhail and should therefore be regarded as obiter dicta and not binding on me. Even if that submission be right and I am by no means sure that it is what was said by Lord Denning MR is of high and persuasive authority and I feel I should follow it.

Finally, counsel for the defendants submits that a person seeking an equitable remedy should make a full and frank disclosure of all the relevant facts: See *R v. Income Tax General Comr., ex parte Polignac*. He said that in their affidavits these plaintiffs had not made a full and frank disclosure of all the facts. They had not disclosed the precise circumstances in which they came to enter on these premises and it might very well be that at least one criminal offence, in addition to an offence under the Forcible Entry Act 1381, had been committed. He submitted that as they were seeking relief in equity the onus was on them to negative any possible criminal offence which might have been committed.

In construing this Section I am not concerned with the question whether an electricity authority is under a duty to supply electricity to other classes of occupiers - for example, tenants holding over after termination of the lease. I am simply concerned with whether the word "occupier" in Section 27(1) of the 1889 Act is apt to include these plaintiffs. I accept the submissions of counsel for the defendants. In my judgment, whether or not the plaintiffs committed a criminal offence, they never gained possession of the premises, as that word is understood in our law, by reason of the circumstances of their entry. Such an entry was unlawful and the word "occupier" in Section 27(1) does not in my judgment include a person whose original entry on the premises was other and different to the word "occupier" may not have a different meaning and that such persons are not, for example, under a liability to pay rates. But under the provisions of this section of this Act the defendants are under no liability to provide the plaintiffs with electricity. When the defendants discovered the circumstances of the entry of the plaintiffs on these premises they were in my judgment quite entitled to discontinue the supply. In those circumstances this application must fail.

28. In the case of *Adlam v. the Law Society* reported in 1968 (1) All ER 17, it was held that continuous practicing as a solicitor for a period of five years as required by Section 41(1) of the Solicitors Act 1957 for being entitled to be an articled Clerk was not fulfilled as the practicing experience in the year when his practicing certificates issued after December 15, he was not qualified lawfully to act as a Solicitor during the interval between the dates of his practicing certificates and the last preceding

November 16, though he actually practiced. Such action was not construed as that he had practiced lawfully. The word "lawfully" was incorporated to count the practicing experience, in that case.

29. In the case of *Re Abdul Manan* reported in 1971(2) All E.R 1016, the word "ordinarily resident" under the Commonwealth Immigrants Act, 1962 with reference to Section 2(2)(a) as substituted by the Commonwealth Immigrants Act 1968 u/s 2(1) came up for interpretation. The Bench was constituted by three Judges in the Court of Appeal, Civil Division. Report of Lord Denning M.R is relevant which reads such

The point turns on the meaning of "ordinarily resident" in the se Acts. If this were an income tax case he would, I expect, be held to be ordinarily resident here. But it is not an income tax case. It is an immigration case. In these statutes "ordinarily resident" means lawfully ordinarily resident here. The word "lawfully" is often read into an Act. See, for instance, *Adlam v. Law Society*. It should be read into these Acts. It is perfectly plain on the facts that Mr. Manan was not lawfully here at all. He was guilty of an offence when he deserted his ship. He continued to be guilty of an offence when he stayed here. He was continuously guilty of offence under Sections 4 and 4A of the 1962 Act. Paragraph 8(2)(b) of Schedule I to the 1962 makes it plain that, as a deserting seaman who remains here after the ship has left port, he is to be treated as having been refused admission. He can be sent off again - without any time limit - whenever he is picked up and found as a deserting seaman. He certainly does not put himself in any better position by going abroad for a short time - as Mr. Manan did - and then coming in and presenting himself to the immigration authorities. It is quite plain to me that Mr. Manan has never been lawfully resident here; he does not qualify at all for the right which is given those who have been ordinarily resident here. I think, therefore, that this appeal must be dismissed.

30. In the case of [New Delhi Municipal Committee Vs. Kalu Ram and Another](#), the word "money payable or money due" was interpreted as legally recoverable and not barred by limitation by considering the word "lawfully payable and lawful due". The same view was taken so far as interpreting the word "amounts due" as "lawfully amounts due" in the case of [State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr.](#) .

31. Now the intention of legislation and the conceptual meaning of word "occupier" appears in Section 43 of said Act is to be examined.

32. In the *Maxwell on the Interpretation of Statutes Twelfth Edition* edited by P.St.J.Langan at page 274 discussed the principles about construction of words "In Bonam Partem". At page 274 under Chapter 3, several judgments were referred to. The relevant paragraph is quoted below:

Words are prima facie to be taken in their lawful sense. Where as Act, for instance, gave a certain efficacy to a fine levied on land, it referred only to a fine lawfully levied.... This principle that were an Act refers to a thing being done. It is to be taken as referring to the thing being lawfully done.

33. Any word in the statute for its proper construction "bonam partem" principle should be followed. It is also a settled legal position on interpretation of a statute that no advantage should be allowed in favour of a person due to his own wrong to avoid injustice. Absurdity in construction, if possible, be rejected, unless the policy of the act requires it, if it would enable a person by his own act to profit by his own wrong. "A man may not take advantage of his own wrong. He may not plead his own interest a self-created necessity", is the finding and observation in the case of Kish Tailer reported in [1911] 1 KB 625 per Fletcher Moulton Ld. J. at page 34 of the report. It is settled law that nobody can have a premium on his own wrong and a wrongdoer who has committed a criminal /quasi criminal offence, is not entitled to have any relief from the Court of Equity and the interpretation of the word must be having regard to the statutory interpretation so that nobody should abuse statutory provision.

34. One Division Bench of this Court came to a finding in MAT No. 009 of 2008 as referred to above by its judgment dated 01.04.2008 that occupier mean "lawful occupier". The order dated 01.04.2008 reads as such-

In the High Court at Calcutta

Civil Appellate Jurisdiction

Circuit Bench at Port Blair

MAT No. 009 of 2008

Smti Mahamaya Biswas v. The Andaman and Nicobar Administration and Ors.

Ms. Anjili Nag...for the appellant

Mr. S.K. Mandal...for the respondents

April 01, 2008

We have heard the learned Counsel appearing for the parties.

This appeal is directed against an order passed by the Hon"ble First Court dated 25.09.2007 refusing the prayer of the petitioner to supply electricity at the premises in question where the petitioner asked for the supply of such electricity.

The petitioner had applied for supply of electricity pursuant to a press note in terms of which electricity connection for domestic use was to be provided to those families which had encroached the Govt. revenue land after 1978 or prior to 1993. The Hon"ble First Court came to the conclusion that the petitioner is an unauthorized occupier of the premises in question in respect of which such electricity connection is applied for. The Hon"ble First Court also relief upon a notification dated 9th August, 1983 issued by the A & N Administration, namely, A & N Islands Electrical Energy (Control & Supply, Distribution, Consumption & Use Amendment) Order 1985, and from the said order it appears that the petitioner is required to submit

documentary proof in support of his/her right, title interest over the land and building in which the electric energy is applied for. The Hon"ble First Court has also held that any application for such electric meter is liable to be rejected if the applicant is an unauthorized occupier of the premises in respect of which such electricity connection is applied for.

It further appears from the fact that the writ petitioner asked for the electricity at the premises in question which, in fact, allotted to the police department and the writ petitioner is in illegal encroachment of the said land.

There is no doubt, as it appears from the records that the land in question in respect of which the petitioner has claimed electricity connection, admittedly belong to the police department. Therefore, the Hon"ble First Court came to the conclusion that the petitioner is an unauthorized occupier. Therefore, he cannot be treated as an occupier as contemplated in Section 43 of the Electricity Act, 2003 and hence, the Hon"ble First Court rightly rejected the writ petition.

It appears to us that the Hon"ble First Court rightly held that in terms of Section 43 of the Indian Electricity Act, 2003, the occupier cannot be an illegal occupier. It has to be taken into account the owner or occupier which has been referred in the said section is nothing but giving a right to a occupier of the premises in question, who is legally entitled to have the electricity supply at the premises.

After considering the materials on record and after having heard the learned Counsel appearing for the parties, we do not find that the petitioner can claim to be a lawful occupier of the premises in question, and accordingly, we must come to the conclusion that the Hon"ble First Court rightly came to the conclusion that the petitioner is not entitled to have the electricity connection.

Hence the appeal is dismissed. There will be no order as to costs.

35. Through there is no elaborate discussion of the point but finding of the said Division Bench in my view could be accepted as a right finding having regard to the said Rules 2006 as referred to and the public interest issue. Otherwise the unauthorized occupier, encroacher, squatter who has committed wrong, in an unclean hand will come to the Court of equity to have protection which is not permissible under the law.

36. Now the question of applicability of Rule 2006 to read provision of the enabling Act, 2003 could be considered as an aid for construction on the reflection of legal position of interpretation of statute.

37. u/s 179 of the Electricity Act, 2003, every rule and regulation prior to its effect by appropriate gazette notification are required to be laid before the Parliament and after that when both the Houses would agree, the Rule and/or Regulation are given effect to. Section 179 reads such-

179. Rules and regulations to be laid before Parliament:- Every rule made by the Central Government, every regulation made by the Authority, and every regulation made by the Central Commission shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

38. The Rule namely Works of Licencees Rules, 2006 accordingly was placed before both the Houses of Parliament u/s 179 of the Electricity Act, 2003 and such Rule was framed in exercise of powers conferred by Section 67 Sub-section 2 of the Electricity Act, 2003 read with Section 176 Sub-section 2 of the said Act. Section 67(2)(a) permits the appropriate government to make rules regarding cases and circumstances in which the consent of the appropriate government, owner or occupier as the case may be shall be required for carrying out works namely; works of laying down electric supply line and supply of electricity. Sub-section 2 of Section 67 further stipulated different field of work which already quoted above and hence having regard to the provision of Section 179 of the said Act, the Rule 2006 was framed by the Parliament on agreed terms of both the Houses.

39. Now the question is when any rule is framed on express approval of the parliament whether that Rules to be construed as a Rule under "as if enacted in this Act" formula and its reflection and effect upon the provision of the Act itself. This question was dealt with in the case Jackson v. Hall reported in 1980 1 ALL ER 177 (HL). The said judgment has given the impression that rules made in exercise of statutory power which do not have express approval of the Parliament, can not be relied upon as an aid to construction of statute. The relevant paragraph reads such

A view to the opposite effect was expressed in *Re Wier, Ex parte Wier* by Mellish LJ who said:

...where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act, and if we find that in the rules any particular construction has been put on the Act.... it is our duty to adopt and follow that construction.

In my opinion that statement is erroneous, at least in relation to rules like the 1976 rules, which have not been affirmatively approved by Parliament, and it should not be treated as authoritative in relation to such rules.

40. The decision, however, later on explained as not laying down any general proposition that subordinate legislation not having express approval of Parliament can never be used as an aid to statutory interpretation in the case *British Amusement Catering Trades Association v. Westminster City Council* reported in (1988) 1 ALL ER 740, p.745 (HL). The relevant paragraph reads such

In *Jackson v. Hall* (1980) 1 ALL ET 177 at 183 : (1980) ACT 854 at 884 Viscount Dilhorne rejected the submission that the content of a form produced pursuant to rules made by the Agricultural Land Tribunals (succession to Agricultural Tenancies) Order 1976, SI 1976/2183, could be relied on as an aid to the construction of the Agriculture (Miscellaneous Provisions) Act 1976. But I do not take this as an authority for the general proposition that subordinate legislation can never be used as an aid to statutory interpretation. In *Hanlon v. Law Society* (1980) 2 ALL ER 199 : (1981) AC 124 this question is discussed in the speeches of Lord Simon, Lord Scarman and Lord Lowry. Lord Lowry identified a number of circumstances in which subordinate legislation may be used as an aid to the interpretation of the parent Act (see (1980) 2 All ER 199 at 218 : (1981) AC 124 at 193-194). Two instances given by Lord Lowry are of particular relevance:

Regulations which are consistent with a certain interpretation of the Act tend to confirm that interpretation. Where the Act provides a framework built on by contemporaneously prepared regulations, the latter may be a reliable guide to the meaning of the former.

41. Houses of Lords in the case of *British Amusement Catering Trades Association* (supra) approved the proposition laid down by Lord Lowry in *Hanlon v. Law Society* reported in (1980) 2 All ER 199 (HL) by indicating the circumstances in which sub-ordinate legislation, in that case regulation, could be used to aid to interpretation of the parent Act. These propositions read such-

These propositions are: (1) Subordinate legislation may be used in order to construe the parent Act but only where power is given to amend the Act by regulations or where the meaning of the Act is ambiguous. (2) Regulations made under the Act provide a parliamentary or administrative contemporanea expositio of the Act but do not decide or control its meaning: to allow this would be to substitute the rule making authority for the judges as interpreter and would disregard the possibility that the regulation relied on was misconceived or ultra vires. (3) Regulations of the Act which are consistent with a certain interpretation tend to confirm that interpretation. (4) Where the Act provides a framework built on by contemporaneously prepared regulations, the latter may be a reliable guide to the meaning of the former. (5) The regulations are a clear guide, and may be decisive, when they are made in pursuance of a power to modify the Act, particularly if they come into operation on the same day as the Act which they modify, (6) Clear guidance may also be obtained from regulations which are to have effect as if enacted in the parent Act.

42. The Apex Court also has held "rules made under a statute are the legitimate aid to construction of the statute as contemporanea expositio" in the case [P. Kasilingam and others Vs. P.S.G. College of Technology and others](#), . The relevant paragraph being paragraphs 19 and 20 read such-

19. We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is no doubt true that in view of Clause (3) of Section 1 the Act applies to all private colleges. The expression "college" is, however, not defined in the Act. The expression "private college" is defined in Clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is, however, given in the Rules wherein the expression "college" has been defined in Rule 2(b) to mean and include Arts and Science College, Teacher Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the rule making authority has deliberately refrained from including professional and technical colleges in the said definition. It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word "means" or the word "includes". Sometimes the words "means and includes" are used. The use of the word "means" indicates that "definition is a hard-and fast definition, and no other meaning can be assigned to the expression than is put down in definition." See: Gough v. Gough (1891) 2 QB 665 ; [Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others](#), . The word "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their nature import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions," see Dilworth v. Commissioner of Stamps 1899 AC 99 at pp 105-106 (Lord Watson); [M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh](#), . The use the words " means and includes" in Rule 2(b) would, therefore, suggest that the definition of "college" is intended of be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. In so far as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time. As noticed earlier the Grant-in-Aid Code contains provisions which, in many respects cover the same filed as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with

the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was not working satisfactorily so as to be replaced by the system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that Rule the expression "Director" is defined to mean the Director of Collegiate Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered.

20. The Rules have been made in exercise of the power conferred by Section 53 of the Act. u/s 54(2) of the Act every rule made under the Act is required to be placed on the table of both Houses of the Legislature as soon as possible after it is made. It is accepted principle of statutory construction that "rules made under a statute are a legitimate aid to construction of the statute as *Contemporanea Expositio*" (See: *Craies on Statues Law*, 7th Edition pp.157-158; [The Tata Engineering and Locomotive Company Ltd. Vs. Gram Panchayat, Pimpri Waghere](#), . Rule 2(b) and Rule 2(d) defining the expression "college" and "Director" can, therefore, be taken into consideration as *contemporanea expositio* for construing the expression "private" college" in Section 2(8) of the Act. Moreover, the Act and the Rules form part of a composite scheme. Many of the provisions of the Act can be put into operation only after the relevant provision or form is prescribed in the Rules. In the absence of the Rules the Act cannot be enforced. If it is held that Rules do not apply to technical educational institutions the provisions of the Act cannot be enforced in respect of such institutions. There is, therefore, no escape from the conclusion that professional and technical educational institutions are excluded from the ambit of the Act and the High Court has rightly taken the said view. Since we agree with the view of the High Court that professional and technical educational institutions are not covered by the Act and the Rules, we do not consider it necessary to go into the question whether the provisions of the Act fall within the ambit of Entry 25 of List III and do not relate to Entry 66 of List. I.

43. In the case of [Pali Devi and others Vs. Chairman, Managing Committee and another](#), , the issue involved was about meaning of the word "employee" u/s 20(2) of the Minimum Wages Act, 1948 whether would include ex-employee. Taking assistance of rules and forms made in the Minimum Wages Act, 1948, it was held that ex-employee would be entitled to file a petition u/s 20(2) of the said Act. The relevant paragraph 6 and 8 read such

6. It is plain that paragraph one of the Form equates the past and the present as an alternative. It obviously established the right of an ex-employee to move a petition u/s 20(2) of the Act. This Form was introduced in the Rules by Notification No. G.S.R. 1301 dated 28.10.1960. The statutory language employed in the Form is a good hint

to discern the true scope of Section 20(2) to determine whether a past employee can invoke the provisions of the Act or not.

8. ...Thus on account of the preponderance of authority, Section 20(2) and 2(i) had to be read along with the Rules and Form VI to lean in favour of the view that both past and present employees were entitled to move in the matter. Such would be a purposive approach, which would carry out the necessary intendment of the statute, for which the Rules and the Form lend a hand to carry out the objectives of the Act. The language employed therein, even though executive voiced, is more often than, not demonstrative of the legislative purpose. So viewed, the intendment of the statute is furthered if an ex-employee too is held entitled to seek relief u/s 20(2) of the Act.

44. In the case *Tata Engineering and Locomotive Co. Limited v. The Gram Panchayat, Pimpri Waghere* by interpreting the word "house" stipulated u/s 89 of the Bombay Village Panchayat Act, 1933, the Apex Court applied the principle "rules framed under the statute are legitimate aid" to interpret the provision of the Act. Para 22 being relevant reads such

22. The 1952 resolution of the gram panchayat in the present case is to be understood in the background of the provisions contained in Section 89 of the Act and the rules framed u/s 108 of the Act. The rules were placed before the legislature for approval. The rules frame in 1934 used the words "lands and buildings" instead of the words "lands and houses". The rules are a legitimate aid to construction of the statute as *contemporanea expositio* (see *Craies on Statute Law*, 6th Edition, p.157)".

45. In that case the concerned rules were placed before the legislature for approval. The court applied the principles of *contemporanea expositio*.

46. Having regard to the aforesaid judgment in the field about aid of rules to construct any provision of enabling Act, the present issue to be considered under the Electricity Act, 2003. There is no doubt that Section 43 of the said Act has no definition of the word "occupier". In the Electricity Act, 2003 also, no definition of the word "occupier" has been stipulated. Section 43 of the said Act, 2003 had no effect till 18.04.2006 when the Licensee Rules 2006 was finally published in the Gazette of India being processed through the Parliament u/s 179 of the Electricity Act, 2003, having regard to Section 185 Sub-section 2(b) whereby and whereunder the provisions contained in Section 12 - 18 of the Indian Electricity Act, 1910 and the rules made therein were made effective till the rules were framed u/s 67 - 69 of the Electricity Act, 2003 irrespective of the repeal of Act 1910. The Sub-section 2 of Section 185 starts with notwithstanding clause, hence Section 12 of the India Electricity Act, 1910 was in full force.

47. Section 12 of the Indian Electricity Act, 1910 read such-

12. Provision as to the opening and breaking up of streets, railways and tramways.-

(1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of the his license to lay down or place electric supply lines without the area of supply, without that area

(a) open an breakup the soil and payment of any street, railway or tramway.

(b) Open and breakup any sewer, drain or tunnel in or under any street, railway or tramway;

(c) Lay down and place electric supply lines and other works.

(d) Repair, alter or remove the same; and

(e) Do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the [owner or occupier] concerned, as the case may be, to lay down or place any electric supply line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever and whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee;

Provided that any support of an [overhead line] or any stay or strut required for the sole purpose of securing in position any support of an [overhead line] may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town [* * *], the Commissioner of Police by order in writing so directs:

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or sturt has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town [* * *], the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under Sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under Sub-section (2) shall be subject to revision by the State Government.

(5) Nothing contained in Sub-section (1) shall be deemed to authorize or empower any licensee to open or breakup any street not repairable by [the Central Government or the State Government] or a local authority, or any railway or

tramway, except such streets, railways or tramways (if any) or such parts thereof, as he is specially authorized to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the State Government.

Provided that the State Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the State Government may direct, and within such period as the State Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

[(6) In this section, "occupier" of any building or land means a person in lawful occupation of that building or land]

48. u/s 12(6) of the said Act 1910, the "occupier" was defined as lawful occupier alike the Licencee Rules, 2006 under definition Clause 2(1)(b). With effect from 18.04.2006, the Licensee Rules, 2006 came in the field wherein the word "occupier" is defined as lawful occupation by legislatures namely both Houses of Parliament at their wisdom by framing the rule u/s 179 of the said Electricity Act, 2003. u/s 67 Sub-section 2, the appropriate government got the power to frame the rules with reference to the subject and field stipulated thereunder. The word appropriate government has been defined in the definition clause of Section 2(5) of Electricity Act, 2003 which reads such

(5) Appropriate Government" means

(a) the Central Government -

(i) in respect of a generating company wholly or partly owned by it;

(ii) in relation to any inter-state generation, transmission/distribution, trading or supply of electricity and with respect to any mines, oilfields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;

(iii) in respect of the National Load Despatch Centre and Regional Load Despatch Centre;

(iv) in relation to any works or electric installation belonging to it or under its control;

(b) in any other case, the State Government having jurisdiction under this Act;

49. In the instant case, the Central Government is generating company as well as it is entrusted with the duties to install supply line and the supply of electricity is controlled by the Central Government, Andaman and Nicobar Islands being the

Transmission/distribution licensee having regard to Section 14 third proviso of said Act as already discussed.

50. Under Rule 3(1)(a) of the Rule, 2006, there is an embargo that without prior consent of the "occupier" which to be considered as only lawful occupier having regard to said rule, the licensee would not been entitled to carry out or laying down any electric supply line or providing any supply against any building, or on, over or under any land.

51. Hence, in the instant case applying the principle of contemporanea expositio and also the principles that to interpret the provision of enabling Act, the Rules framed will give to an aid and more particularly when such rule has framed by the legislature, the word "occupier" appearing u/s 43 of the Electricity Act, 2003 always to be interpreted as a lawful occupier on taking aid of the meaning of the word "occupier" of Rule 2(1)(b) of the Licensee Rules, 2006.

52. Under Rule (2)(2) of the said Rule 2006, it is further provided that the word and expression used therein in the rules as not defined should be assigned the meaning of the word mentioned in the Act. There is no definition of the word "occupier" and occupation u/s 43.

53. The Rule 2006 was processed through the Parliament having regard to the provision of Section 179 of the Electricity Act, 2003, hence though it is a delegated legislation, but delegate was kept under vigilant and control the legislature.

54. Another relevant point is to be dealt with namely the impact of Section 185 Sub-section 2 of Electricity Act, 2003 whereby Section 12 - 18 of Indian Electricity Act, 1910 and Rules made therein were made effective till the framing of the Rules u/s 67 - 68 of Electricity Act, 2003. The relevant portion of Section 185 Sub-section (1)(2)(a)(b) reads such

Section 185 Repeal and Saving - (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in Sections 12 - 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under Sections 67 -

69 of this Act are made.

(c) The Indian Electricity Rules, 1956 made u/s 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations u/s 53 of this Act are made;

(d) All rules made under Sub-section (1) of Section 69 of the Electricity (supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) All directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

55. u/s 12 Sub-section (6) of the Indian Electricity Act, 1910, the word "occupier" has been defined as lawful occupier and prior to framing of the Rules in exercise of power u/s 67 being the Works of Licensees Rules, 2006 as published on 18.04.2006 in the Gazette of India, the Rule 12 of the Electricity Act, 1910 was in force irrespective of repeal of the said Act of 1910 having regard to the provision of Sub-section (2) Clause (b) of Section 185. Thereafter, the said Licensee Rules, 2006 became effective from April, 18, 2006 wherein the word "occupier" has been defined as a person in lawful occupation. Considering that, this Court is of the view that the word occupier always has been construed in Section 43 having reflection of the rules framed u/s 67 of the said Electricity Act, 2003 as lawful occupier.

56. Having regard to the aforesaid findings and observations, the point No. I is answered as follows;

57. The meaning of the word "occupier" u/s 43 of the Electricity Act always to be read as "lawful occupier" having regard to the meaning of the word "occupier" as declared by the Court of law in several judgments as discussed by applying the Rules, 2006 under the tool of contemporanea expositio and the judgments on that point as discussed. It is held that unauthorized occupiers, encroachers, squatters of any land or premises are not entitled to file any application u/s 43 of the Electricity Act, 2003 and distribution licensee lawfully can not provide electricity by laying down the supply line in due discharge of their duties having regard to the provision of the said Electricity Act and Rules, 2006.

Point No. II now is answered:

58. So far as the point No. II is concerned as to whether right to electricity as claimed by encroachers/ trespassers/unauthorized occupier is included within the spectrum of right to shelter, as a emanated fundamental right derived from extended meaning of word "Life" as envisaged in Article 21 of the Constitution of India. There is no doubt that in the case of [Chameli Singh and others etc. Vs. State of U.P. and another](#), , a judgment of three Judges Bench, it is held that the right to shelter includes the supply and consumption of electricity, but on a reading of the

said judgment, it appears that issue involved in that case was an action against the government by the land owner assailing a Land acquisition proceeding on the ground that there was no emergency to avoid compliance of Section 5A of the Land Acquisition Act, 1894 and there was no emergency to apply Section 17(4) of the said Act. The acquisition proceeding was initiated for public purpose for providing houses to the Schedule Caste (for short dalits). While dealing with the issue involved, the Court, however, in paragraph 8 had observed that in a civil society having regard to the Universal Declaration of the Human Rights and Convention and the constitutional provision, basic human rights in the nature of providing shelter could not be denied and the Court brought different facilities under the head of "right to shelter" including "electricity". Paragraph 8 of said report reads such

8. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when his assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Rights to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc, so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence; therefore, frustrates the very object of the constitution animation of right ot equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

59. But in the said report in paragraph 6, the Court considered the judgment passed in the case of [Gauri Shanker and others Vs. Union of India and others](#), a judgment of three Judges Bench, to hold that right to shelter is not a constitutionally guaranteed right to a tenant who has suffered the eviction under the Delhi Rent Control Act and restrictions on the right to shelter placed by the statute on the statutory tenants were not violative of Article 21 of the Constitution of India. The paragraph 6 of the said judgment reads such

6. In Gauri Shanker v. Union of India, in the context of eviction of tenant under the Delhi Rent Control Act, this Court observed that the right to shelter is not a constitutionally guaranteed right. Restrictions on the right to shelter placed by the statute on the statutory tenants were not violative of Article 21. The ratio must be understood in the light of the statutory operation under the Rent Control Act.

60. In the case of Gauri Shanker (supra), the Apex Court dealt with the issue about right of an evicted tenant under anvil of Article 21 of Constitution of India. So far as the domestic tenancy is concerned it is held in paragraph 12 of report that the same is not constitutionally guaranteed right under Article 21 of the constitution of India for bringing the same under the canopy of "right to shelter". Relevant paragraph 12 reads such

12. It is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and no to extend such rights to the heirs of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act to a tenant after the termination of the tenancy and to the heirs of the tenant is only a creation of the Act and it is open to the Legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provision to the so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(i)(iii) of the Act, which seeks to restrict or limit the right of heirs, insofar as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Article 14 of the Constitution. This is not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In this context, it is only proper to quote the following observations in Sakhawat Ali v. State of Orissa, which is apposite:

...legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.

(emphasis supplied).

Nor are we impressed by the plea that the right to shelter is a guarantee under Article 21 of the Constitution of India and so the abridgement or limitation placed on the rights of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the rights of the tenant under Article 21 of the Constitution of India. We hold that the statutory tenancies regarding residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(i)(iii) of the Act on the rights of the heirs of the statutory tenants of residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India.

61. Similar view that unauthorized occupants are not covered under canopy of "Right to Shelter", an emanated fundamental right under Article 21 of the Constitution of India was taken in the case [Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others](#), a judgment of three Judges Bench.

62. In the case of Lalita Jalan (Supra) while answering the point raised about meaning of word "occupation" of allotted premises u/s 630 of Company Act and right of occupants on the factual matrix that even after termination of the employee or in the event of death of the employee or his living elsewhere, the dependants who were living with the employer earlier, whether may retain the possession of the premises applying the right under Article 21 of the Constitution of India, the Court answered the issue negatively in paragraph 22. The relevant portion reads such

...The possession of the property by an employee or any one claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be sated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression "employee or anyone claiming through him" will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K (Bombay) Ltd. in our opinion is not correct and the view expressed in Abhilash Vindokumar Jain is justified and should be accepted in interpreting the provision of Section 630 of the Act.

63. In the instant case, it appears that the land belongs to the Government and the writ petitioners admittedly encroached the land. The writ petitioners admittedly wrongdoers and their action is illegal so far as the encroachment of the government revenue land is concerned. As already discussed that all the land in the Andaman and Nicobar Islands belonging to the Central Government and, accordingly, the Central Government is the owner of the land and nobody can possess land without valid tenancy right granted by the Government.

64. Having regard to the very action of the writ petitioners, admittedly, they have encroached the government revenue land and occupying the same illegally, hence the concept of right to shelter under Article 21 of the Constitution of India can not be injected thereto as their occupation is being controlled under the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 and Andaman and Nicobar Islands Land Revenue and Land Reforms Rules 1968, the statutory provisions framed in exercise of the power under Article 240 of the Constitution of India by the President of India. Rights under Article 21 of the Constitution of India to be looked into and the benefits and privileges to be construed in the angle of the concerned Act is the view expressed when a tenant under the Delhi Rent Control Act, was denied, his right to shelter under Article 21 Constitution of India in Gauri Shanker (supra). On the reflection of views expressed in Gauri Shanker (supra) and Lalita Jalan (supra), the concept of right to shelter under Article 21 of the Constitution of India can not be applied in the present case of unauthorized occupants who are admittedly encroacher of the Government land illegally and forcibly. "Right to shelter" can not be applied to a wrongdoer, to an encroacher, to a squatter and to unlawful occupier. As "right to shelter" can not be applied for protection of the unauthorized occupier of the government revenue land, as a consequence thereof right to electricity within the umbrella of the said "right to shelter" as discussed in the case of Chameli Singh (supra), also cannot be considered for its applicability so far as the present case of the encroachers of the Government revenue land is concerned.

65. If the right to shelter is applied to a person who committed criminal as well as quasi-criminal offence by encroaching the Government revenue land, fiber of basic constitutional right will be damaged and destroyed and thereby a wrongdoer would be given a premium by the Court of equity. Hence, I am of the view that in the instant case the writ petitioners are not entitled to claim "right to shelter" under Article 21 of the Constitution of India in respect of the encroached land where they have entered illegally and forcibly without any authority and consent of the government and as a sequence thereof, right to electricity for the premises as constructed illegally on such encroached land can not be extended in their favour. The point of No. 2 is answered accordingly.

66. It appears that the Division Bench of Calcutta High Court in the Case of [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#), held on

applying the Chameli Singh (supra) case that an "unauthorized occupier" is also entitled to have the supply of electricity by considering his right under the canopy of right to shelter, emanated fundamental right.

67. Having regard to the judgment of the Gauri Shanker (supra) and the ratio decidendi of judgment of constitutional bench, though it has been passed while dealing with a case under the service jurisprudence, in the case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), wherein the court held that backdoor appointees, alike wrongdoers similar to this case, who were appointed in violation of Recruitment Rules have no legal right to claim the post by regularization of illegality and my finding and observation above and the Rule, 2006 as well as judicial finding of Apex Court passed in the case of K.M. Mathes (supra) Gouri Shanker (supra), Lalita Jalan (supra) and placing persuasive value on the case Woodcock (supra), the judgment as delivered in the case of [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#), with due respect of their Lordships could be considered as a judgment per incuriam as in that case no argument was advanced with reference to the question as to whether a wrongdoer could be granted the right to shelter and consequential right about supply of electricity on the reflection of the judgment as discussed above, and in that case, no argument advanced about the impact of the licensee Rules, 2006 which has prescribed an embargo so far as the work of laying down supply line by the licensee without the consent of the lawful owner or lawful occupier in terms of the definition stipulated therein.

68. The point whether a judgment where relevant statutes and legal points neither argued nor answered could be a "precedent" was dealt with by the Apex Court in the case of [Goodyear India Ltd., Gedore \(India\) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another](#), where in paragraph 34 the point was discussed in detail, which reads such

34. This ingredient was neither argued nor was considered, so the passing reference based on the phraseology of the section is not the dictum of [The State of Tamil Nadu Vs. M.K. Kandaswami and Others](#). Secondly, in Section 9 in the instant case, the raw materials purchased or used in the manufacture of new goods and thereafter those new goods were dispatched outside the State of Haryana whereupon the tax was levied. This important factor is wholly missing in Section 7A of the Tamil Nadu Act, which was considered in [The State of Tamil Nadu Vs. M.K. Kandaswami and Others](#). In that decision, this Court approved the Kerala High Court's decision in Malabar Fruit Products 1972 Tax LR 2202 (supra), which was confined to the interpretation of the words goods, the sale or purchase under the Act. A decision on a question which has not been argued cannot be treated as a precedent. See the observations of this Court in [Rajput Ruda Meha and Others Vs. State of Gujarat](#). The decision of the Division Bench of the Kerala High Court in STC 359 : 1974 Tax LR 1730 is clearly distinguishable. In [Ganesh Prasad Dixit Vs.](#)

[Commissioner of Sales Tax, Madhya Pradesh](#), the question of constitutional validity was not argued. A reference was made by Mr. Tewatia to the decision of the High Court in the [The Coffee Board Vs. Commissioner of Commercial Taxes and Others](#), and the decision of this Court in [Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others](#). In these cases the question involved was the acquisition of coffee by the Coffee Board under compulsory acquisition or purchase or sale of goods. That question is entirely different from the question with which we are concerned in these appeals.

69. Similar view was expressed by the Apex Court in the case of [Mittal Engineering Works \(P\) Ltd. Vs. Collector of Central Excise, Meerut](#).

70. In the case of [Municipal Corporation of Delhi Vs. Gurnam Kaur](#), the Court held that "a decision should be treated as given per incuriam when it is given in ignorance of a statute or of a rule having the force of a statute. It is a settled position of law that a decision of the court takes its colour from the question involved in the case in which it was rendered as held in the case of [State of Punjab Vs. Baldev Singh](#), a judgment of constitutional bench. It is also a settled legal position of law that one additional or different fact may make a world of difference between conclusions in two cases itself when the same principles are applied in each case to a similar facts. Reliance is placed in the case of [The Regional Manager and Another Vs. Pawan Kumar Dubey](#), a judgment of three judges Bench. The same view has been reiterated in the case by identifying the principles as "circumstantial flexibility" in para 11 of [Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another](#), para 11 of the said report reads such-

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases blindly placing reliance on a decision is not proper.

71. A little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision, is the view expressed in the case of [The State of Orissa Vs. Sudhansu Sekhar Misra and Others](#), [Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others](#), and [Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another](#). It is held that precedential status should be on basis of some principle of law supported by reasons and some observation without laying down the principle of law and without giving reasons, do not tantamount to precedent. Reliance is placed in the judgment passed in the case of Anil Vasu Dev Salgaonkar v. Naresh Kushai Shigaonkar reported in reported in 2009 (9) SCC 313.

72. Having regard to the aforesaid findings and observations, the view expressed in the case of [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#), and in the earlier two judgments passed in MAT No. 031 of 2007 under the cause title the Lieutenant Governor and Ors. v. Shri Rajaratnam and in MAT No. 029

of 2009 under the cause title Smti Mahamaya Biswas v. Lieutenant Governor and Ors. and having reflection of the judgment delivered in the case of MAT No. 009 of 2008 under the cause title Smti Mahamaya Biswas v. The Andaman and Nicobar Administration and Ors. wherein contrary view was taken, I am of the view that the unreported judgments delivered in MAT No. 31 of 2007 and MAT No. 029 of 2008 and reported judgment Amarendra Singh (supra) could not be construed as binding precedent before me, as in those cases, the point of law and the factual issue as involved herein, were not at all addressed and court has no scope to consider the impact and effect of statutory provision of the Works of Licencees Rules, 2006, impact of the Andaman and Nicobar Island Land Revenue and Land Reforms Regulation as referred to above as applicable on respective petitions, as the case may be.

73. Besides such, it is also settled legal position that in the event of a conflict in between two Division Bench judgments, the Court may follow any one which is to be considered as a judgment supported by merit as per reading of court and on reflection of statutory provision. Reliance is placed to the judgment passed in the case Bholanath Karmakar and Ors. v. Madan Moham Karmakar and Ors. reported in 1987 (2) CLJ 332 [Special Bench] corresponding 1987 (2) CHN 418 ; [R. Rama Subbarayalu Reddiar Vs. Rengammal](#), [Indo Swiss Time Limited Vs. Umrao and Others](#), In the instant case, though the Division Bench in the case of MAT No. 09 of 2008 Smti Mahamaya Biswas (supra) did not pass any elaborate reasoning but held that the word "occupier" appearing u/s 43 of the Electricity Act, 2003 should be construed as "lawful occupier" which as per the judgment of this Court is considered as the judgment to be followed having regard to the Licencees Rules, 2006 and the meaning of the word "occupier" interpreted in the case of Woodcock (supra), in K.M. Mathew (Supra) and Lalita Jalan (supra).

74. Having regard to the aforesaid finding and discussion, the question of point Nos. II, accordingly, is answered to this effect that the word "occupier" u/s 43 of said Act to be construed only as "lawful occupier", right to shelter can not be extended under the provision of Article 21 of the Constitution of India in respect of the encroacher of the government revenue land or any land of others and as a consequence thereof, right to electricity could not be considered as a emanated fundamental right within the canopy of "right to shelter" a derived fundamental right under Article 21 of the Constitution of India. Hence no writ of mandamus could be issued directing supply of electricity as prayed for seeking a writ of mandamus, on breach of Section 43 of Electricity Act, 2003 and Rules 3(a) of Works of Licensee Rules, 2006 as discussed in detail in point No. I

Reference to Larger Bench - Point No. I and II

75. Though I have held while discussing the point Nos. I and II that the judgment and order passed by earlier three Division Bench, one [Amarendra Singh Vs. Calcutta Electric Supply Corporation Ltd. and Others](#), , in the case of Rajaratnam being the

judgment and order dated 21.04.2008 passed in MAT No. 031 of 2008 and in the case of Smti Mahamaya Biswas (supra) being judgment and order dated 01.09.2009 passed in MAT No. 029 of 2009 are the judgment per incuriam due to the finding of the respective Division Benches on the point that unauthorized occupiers, trespassers, encroachers are entitled to enjoy the "right to electricity" on applying the "right to shelter" in terms of Article 21 of the Constitution of India and the interpretation of the word "occupier" u/s 43 of the Electricity Act, 2003 includes also the unauthorized occupiers, encroachers, trespassers, relying upon the judgment of the Apex Court Goodyear (supra) reported in AIR 1990 SC 74 and finding and observation made above, but to have the finality of the legal question involved in the said point Nos. I and II and the following principle of judicial discipline which mandates that any contrary decision on a question of law should be finally settled by a Larger Bench, as held by the Apex Court by holding that even if the decision earlier passed is per curiam but it should be referred to a Larger Bench in the [Dr. Vijay Laxmi Sadho Vs. Jagdish,](#), in the case of [Pradip Chandra Parija and Others Vs. Pramod Chandra Patnaik and Others,](#) and the judgment passed in the case of State Bank of India and Ors. v. Labour Enforcement Officer (Central) and Anr., (1997) 10 SCC 258, I am of the view that the matter is required to be referred to the Larger Bench to settle the law finally so that the litigants may not be confused in view of the conflicting view of respective Division Bench so far as interpretation of the word "occupier" u/s 43 of the said Electricity Act as well as availability of right under "right to shelter" as well as "right to electricity, emanated right on expanded meaning of the word "life" under Article 21 of the Constitution of India, by encroachers, unauthorized occupiers, trespassers etc.

76. Accordingly, the point Nos. I and II earlier framed namely

Point I: Whether unauthorized occupiers, encroachers of any premises and squatters of any premises are legally entitled to file an application u/s 43 of the Electricity Act, 2003 claiming status as "occupier" and thereby may seek supply of electricity in the premises as constructed on encroaching the land; and, whether under the Works of Licensees Rules, 2006, the Distribution Licensee lawfully can provide electricity supply line in due discharge of their duties and what is meaning of word "occupier" in said Act on reflection of Rule 2006?

Point II: Whether right to have "electricity" under the ambit of Article 21 of the Constitution of India by including such right within the derived right "right to shelter" under Article 21 of the Constitution of India could be available to trespasser and unauthorized occupier; and, whether right to shelter a derived/emanated fundamental right could be extended to the unauthorized occupants, squatters, encroachers of any land or premises to provide as a consequential relief to supply electricity, on breach of statutory provisions under the Electricity Act, 2003 and the Works of Licensees Rules, 2006 as well as on public interest.

are referred to for a decision by larger bench to give finality of the legal questions involved, once for all for public interest.

77. The Registry is directed to place all files before the Hon"ble the Chief Justice for an administrative order of the Hon"ble the Chief Justice of High Court at Calcutta for constitution of a Larger Bench, by such number of members as will be considered fit and proper, by His Lordship.

Point No. III now is answered as below:

78. To answer point No. 3 the Press Note issued by the Superintending Engineer and the decision of Central Government as communicated by letters dated 17.01.2003 and 11.03.2003 issued by the Under Secretary to the Govt. of India require to be considered.

79. Those are set out hereinbelow:

Andaman and Nicobar Administration

Office of the Superintending Engineer

Electricity Department

...

Press Note

As per the approval accorded on 11-3.2003 by the Ministry of Home Affairs permanent electric connection for domestic use will be provided by this department to the families which have encroached on Govt. revenue land after 1978 but prior to April 1993.

Generating capacity at all places is available. Press note in this regard was issued on 1-4-2003 on the basis of which the intending persons have started submitting applications and affidavits for obtaining electric connections. All these applications are being forwarded to the revenue authorities for checking the correctness or otherwise about the encroachment on govt. land. For expediting the issuance of certificates by the revenue authorities, weekly meetings will be held at the offices of respective Asst. Commissioners or the Tahsildars for checking the correctness of the encroachment records by the applicant with reference to various records with the revenue department. During such weekly meetings the Pradhan of the concerned village Gram Panchayat would be invited to present along with the Jr. Engineer/Asst. Engineer/Executive Engineer of the Electricity Department so that the individual cases could be jointly checked and settled and required certificates be issued by the concerned Tahsildar at the spot. The weekly meetings shall be held at 10 a.m. on each Saturdays for which suitable notices intimating the Pradhans of Gram Panchayat and others will be issued by the Tahsildar of the respective Tahsil or the Asst. Engineer of the Electricity Deptt., as mutually decided by them.

Superintending Engineer

Electricity Department

No. EL/PL/17-11/2003/1970

Andaman and Nicobar Administration

Office of the Superintending Engineer

Electricity Department

...

Dated at Port Blair, the 20th May, 2003

Copy to:

1. The Deputy Commissioner(Andaman), Andaman District, Port Blair
2. The Deputy Commissioner(Nicobar), Nicobar District, Car Nicobar.
3. The Publicity Officer, Director of IP&T, A&N Administration, Port Blair with two copies for arranging to publish the press note in local dailies.
4. The Chief Editor, The Daily Telegrams, Port Blair for necessary action.
5. The News Editor, AIR, Port Blair for broadcasting the above press note in suitable news item.
6. The Editor, Andaman Herald, Port Blair.
7. The Editor, Andaman Express, Port Blair.
8. The Editor, ASPECT, Port Blair.
9. The Executive Engineer(HQ)/Rural/(PPS&W)&NA, Electricity Department.
10. Note Board.

Sd/-

Assistant Engineer.

No. U.13034/3/2003-ANL

Government of India

Ministry of home Affairs

New Delhi, the 17th January, 2003

TO

Shri Pradeep Singh,
Chief Secretary,
Andaman & Nicobar Administration,
Port Blair

Subject: Sanction of electric connections to the families which have encroached on government revenue land in A&N Islands.

Sir,

I am directed to reference to your d.o. letter No. 1-32/2000 I-(c) dated the 14th January, 2003 regarding the subject mentioned above and to say that there is no objection if the families which have encroached on government revenue land are sanctioned temporary electric connections subject to the following conditions:

- (a) the electricity shall be supplied for domestic use only.
- (b) The facility will be extended to only those families which had encroached on government revenue land after 1978 but prior to April 1993;
- (c) The grant of this facility shall not entitle the person concerned to claim regularization of the construction made on the encroached land or occupation of such encroached land; and
- (d) The facility shall be extended only if the anti-fire and other safety requirements are met with.

2. It is requested that further appropriate action in the matter may please be taken under an intimation to us.

Yours faithfully,

Sd./-

(Vikram Dev Dutt)

Deputy Secretary to the Govt. of India

Tele:23092436

No. U.13034/3/2003-ANL

Government of India

Ministry of Home Affairs

New Delhi, the 11th March, 2003

To

Shri Pradeep Singh,

Chief Secretary,

Andaman & Nicobar Administration,

Port Blair

Subject: Sanction of electric connections to the families which have encroached on government revenue land in A&N Islands.

Sir,

I am directed to refer to the A & N Administration's d.o. letter No. 1-18(7)/2001-Power dated 6th march, 2003 on the above cited subject and to say that in view of the circumstances indicated therein, the Central Government have "no objection" to grant permanent electric connections to the families which have encroached on revenue land in A & N Islands, subject to fulfilling the conditions indicated in this Ministry's letter of even number dated 17th January, 2003.

Yours faithfully,

Sd./-

(Vikram Dev Dutt)

Deputy Secretary(CPS)

80. It appears that all lands in the Andaman and Nicobar Islands are the government land under Regulation 38 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 which is already quoted above. Hence, the government is the owner of the land in terms of Section 43 of the Electricity Act, 2003. The Central Government in the instant case is also a Transmission/distribution Licensee as per Section 14 third proviso, which reads such

14. Grant of licence the Appropriate Commission may, on an application made to it u/s 15, grant of license to any person.

(a) to transmit electricity as a transmission/distribution licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as a electricity trader, in any area as may be specified in the license.

....

provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government of this Act, such Government shall be

deemed to be a licensee under this Act, but shall not be required to obtain a license under this Act.

81. Hence in the instant case so far as the supply of electricity is concerned it appears that the Central Government is the Transmission/distribution Licensee and the land belongs to the Central Government. It has been submitted before this Court that encroachers of government revenue land prior to 1978 were regularized by grant of tenancy right. Having regard to the subsequent development, as a policy decision the government intended to provide some basic amenities to the encroachers of the government revenue land and amongst those one such benefit is providing of electricity for domestic use to the houses constructed on such encroached land subject to fulfillment of conditions stipulated therein. Those conditions have been specified in the letter dated 17.01.2003 under the conditions (a) to (d) as quoted above. All the writ petitioners herein in the respective writ applications have contended that they are the encroacher of the land prior to April 1993, the cut off date.

82. It is a settled legal position of law that orders of the competent authority is binding to the subordinate officers. Reliance is placed to the judgments passed in the case of [K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another](#), corresponding to AIR 1981 SC 1922 wherein earlier views of the Apex Court passed in the case of [Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay](#), was relied upon. Same principles reiterated in the case of [C.B. Gautam Vs. Union of India and Others](#), . All these cases have been relied upon in the case of [UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal](#), corresponding to AIR 1999 SC 2022.

83. Now the question is whether the aforesaid settled legal position could be applied in the instant case and to do such the test is whether those communication as had been relied upon whether that was issued by the competent authority in exercise of the power under the statute and the constitutional provision.

84. It appears from the aforesaid two letters dated 17.01.2003 and 11.03.2004 and the press note dated 20.05.2003, that the Central Government permitted to provide electric supply line to the encroachers who are not occupier within the meaning of Section 43 of Electricity Act, 2003 and facing an embargo under Rules 2006 particularly the provision of Rule 3(1)(a). The aforesaid decision of the Central Government as was communicated was passed as it appears from the letters, in the year 2003. On an application of Section 185 Sub-section 2(b), the Section 43 of the Electricity Act, 2003 was tampered with the provisions contained in Section 12 - 18 of the Electricity Act, 1910 and the rules made thereunder as no rule was framed at that time u/s 67 - 69 of the Electricity Act, 2003. Section 12, Sub-section 6 of Indian Electricity Act, 1910, has defined the word "occupier" wherein the supply of electricity could be made on an application of "lawful occupier" and on consent of the "lawful occupier" of the concerned premises. Having regard to Section 12(6) of the said

Electricity Act, accordingly, the decision of the Central Government even if it is assumed as an executive decision, in terms of Article 73 of the Constitution of India whereby and whereunder executive power of the Union could be exercised in absence of any legislation in the said field, but at the relevant time in the year 2003, already there was a statutory provision in effect under the Indian Electricity Act, 1910 putting an embargo of supply of Electricity, to the premises of the unauthorized occupier and unlawful occupier.

85. Without amending the provision of Section 12(6) of said Act 1910 or Act 2003 in my view there was no scope to issue such consent letter by the Central Government as communicated by the Deputy Secretary, Ministry of Home Affairs, Government of India. Beside such, it appears that those letters are not at all the letters issued on exercise of the power under Article 73 of the Constitution of India. At best the same could be considered as administrative decision and such decision could not be given effect to in view of the settled legal position of law that during the existence of any statutory rule/statutory provision, exercise of power by the Government in contravention of the Act and Rule would not be permissible.

86. Extent of executive power of the Union under Article 73 of the Constitution of India though could be made in the matters to which Parliament has power to make laws but such exercise of power requires to be in the manner as laid down under Article 53 of the Constitution of India which provides that executive power of Union shall be exercised by the Hon"ble President directly or through the officers subordinate to him in accordance with the constitution. In the instant case, there is no such order of the Hon"ble President of India in terms Article 53 read with Article 73 of the Constitution of India. By issuing the letters dated 17.01.2003 and 11.03.2003, the Constitutional provision of Article 53 and 73 never was satisfied.

87. Further more, that exercise of power of the Union under said Article has the limitation. The said power could not be exercised contrary to the provisions of the Constitution or any of law.

88. Reliance is placed to the judgment in the case Bishambhar Dayal Chandra Mohan and Ors. v. State of Uttar Pradesh and Ors., a judgment of two Judges wherein the judgment passed by the Constitutional Bench in the case Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab reported in AIR 1995 SC 549 was relied. Para 20 of the report of Bishambhar Dayal Chandra Mohan (supra) reads such

20. Even assuming that the impugned teleprinter message is not relatable to the two Control Orders, the State Government undoubtedly could, in exercise of the executive power of the State, introduce a system of verification on movement of wheat from the State of Uttar Pradesh to various other States at the check-posts on the border and place restrictions on inter-district movement of wheat by traders on private account within the State. The executive power of a modern State is not capable of any precise definition. In Ram Jawaya Kapur v. State of Punjab,

Mukherjea, C.J., dealt with the scope of Articles 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed: "ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away." It is neither necessary nor possible to give an exhaustive remuneration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

89. Persuasive reference may be made to the case *Rev. Fr. Joseph Valamangalam and Ors. v. State of Kerala* reported in 1958 Ker 290. The portion of paragraph of 46 and 47 reads such

(46). ...The legislative power is not whittled down by the making of the Bill and whether the Bill becomes law or not, remains undiminished and still extends to the very matter covered by the Bill. The executive power of the State therefore still extends to the whole subject of education, even to matters covered by the Education Bill, and until the Bill becomes law, unaffected by it. Of course, once the Bill becomes law, the power can be exercised only in accordance with its provisions for the executive power of a State can be exercised only in accordance with and in obedience to the law. But that does not mean that the power of the executive is confined to the execution of the laws.

As pointed out in [Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab](#), , ordinarily the executive power connotes the residue of governmental functions are taken away and the executive powers of a State extend to matters upon which the State Legislature is competent to legislate and legislation has already been passed. True the executive government can never go against the Constitution or against any law, but it does not follow that, in order to enable the executive to function, there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of those laws. Articles 73 and 162 of the Constitution do not mean that it is only when Parliament or the State Legislature has legislated on matter within their respective limits that the Union or the State executive as the case may be can proceed to function in respect of them.

(47) That the State Legislature is in the process of making a law governing the matter covered by the impugned order does not in any manner affect the executive

power of the State in respect of those matters until the law is actually made.

90. Reliance is made on the case [R.N. Nanjundappa Vs. T. Thimmiah and Another](#), wherein the question is answered that when any rule framed under Article 309 by the Constitution of India is in existence by the executive power under Article 162 of the Constitution of India regularization of service could be done. Regularization order in service passed on exercise of executive power under Article 162 of the Constitution of India whether could be included within the rule making power under Article 309 of the Constitution of India the court answered negatively. Paragraph 23 and 26 of the report reads such.

23. It was contended on behalf of the State that under Article 309 of the Constitution the State has power to make a rule regularizing the appointment. Shelter was taken behind Article 162 of the Constitution and the power of the Government to appoint. No one can deny the power of the Government to appoint. If it were a case of direct appointment or if it were a case of appointment of a candidate by competitive examination or if it were a case of appointment by selection recourse to rule under Article 309 for regularization would not be necessary. Assume that rules under Article 309 could be made in respect of appointment of one man but there are two limitations. Article 309 speaks of rules for appointment and general conditions of service. Regularization of appointment by stating that notwithstanding any rules the appointment is regularized strikes at the root of the rules and if the effect of the regularization is to nullify the operation and effectiveness of the rules, the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore the relevant rules at the material time as to promotion and appointment are infringed and the impeached rule cannot be permitted to stand to operate as a regularization of appointment of one person in utter defiance of rules requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.

26. The contention on behalf of the State that a rule under Article 309 for regularization of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the present case the rule which regularized the appointment of the respondent with effect from February 15, 1958, notwithstanding any rules cannot be said to be in exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 the Government cannot be said to have acted also under Article 162 in the same breath. The two articles operate in different areas. Regularization cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularization would mean conferring the quality of

permanence on the appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

91. Reliance is placed to the case *B.N. Nagarajan and Ors. v. State of Karnataka and Ors.* reported in 1979 (1) 1676, a judgment of three judges Bench whereunder particularly issue considered by the Apex Court while dealing with the effect of any Rules framed under Article 309 of the Constitution of India with reference to the regularization issue as was taken by the government in exercise of power under Article 162 of the Constitution of India. The Court answered when there was an existing valid Rule, under Article 162 of Constitution of India there was no scope to pass any decision regularizing the service on breach of said Rules. The Article 162 of the Constitution of India is alike to Article 73 of the Constitution of India save and except the only difference that under Article 162 of the Constitution of India the power is exercised by the State Government whereas under Article 73 the power is exercised by the Union.

92. In the instant case, the existing law is the Electricity Act, 2003 and Electricity Act, 1910 so far as its provision u/s 12 - 18 are concerned. As Section 12(6) of the Electricity Act, 1910 was in force irrespective of repeal of the said Act having regard to the repeal and saving clause u/s 185(2)(b) of the Electricity Act, 2003 and no executive decision in exercise of power under Article 73 was possible to be taken in breach of the statutory Act.

93. At the relevant time of 2003, even till 18.04.2006 Section 12 of Indian Electricity Act, 1910 was in force wherein statutory embargo providing supply of electricity to the unauthorized occupier was made. Hence without amending that provision, in my view the Central Government had no power to pass any executive decision as communicated. Further more, having regard to my finding and observation as above, while answering to the Point No. I and II wherein I have already held that the meaning of the word "occupier" appearing u/s 43 of the Electricity Act, 2003, on having reflection and aid of Rule 2006 framed by the Parliament in exercise of the Rule framing power under the Act, there was no scope before the Central Government to take any executive decision without amendment of Rule 2006 to provide electricity to the encroachers of government revenue land.

94. Further more the aforesaid communications of the Deputy Secretary, Government of India never speaks about a decision in exercise of the power under

Article 73 of the Constitution of India and there is no such notification under the seal of the executive head of the Central Government, namely, President of India to that effect under Article 53 of Constitution of India.

95. In absence of any authenticated document about exercise of power by the Union under Article 73 of the Constitution of India, the same communication of the Deputy Secretary, Ministry of Home Affairs will not be sufficient to consider that the power was exercised by the union under the said constitutional provision to supply electricity to the encroachers.

96. However, this Court is not unmindful of the fact that in the instant case, the Central Government is the Transmission/distribution licensee and the Central Government is also the owner of the land of Andaman and Nicobar Islands. Hence Central Government may take any decision by appropriate action applying the constitutional provision and on amending the concerned Act and the Rules for the purpose of effecting electric supply line to the encroachers if the same is covered within the reasonable policy decision of the Government as is permissible under the law of land read with constitutional provision. As in the instant case, no such pleading to that effect. Hence this Court is not finding any rescue path for providing electricity to the encroachers as prayed for. Had there been appropriate decision by the competent authority namely the Central Government following Constitutional provision and law, surely that decision would have been the binding effect upon the subordinate officers the respondents.

97. In the instant case as the court is not finding any materials to identify the power exercised by Union to reach a conclusion that it was issued by the competent authority in accordance with law on taking care of constitutional provision and statutory provision namely Licensee Rules, 2006 and the relevant Act, as such the court is unable to apply the principles as discussed above about the binding effect of any order of competent authority upon the subordinates.

98. u/s 43 of the Electricity Act only either owner or lawful occupier having regard to the interpretation as made about the word "occupier", is legally entitled to file any application praying for supply of electricity, and in the event of such filing of application, duty is casted upon the Distribution licensee to provide supply of electricity subject to performance of all formalities. In the instant case, as such no writ of mandamus could be issued directing consideration of those applications filed by the respective writ petitioners as they are not the "lawful occupier" of the premises concerned but encroachers of the government revenue land and also for the reason that there is no duty entrusted upon the distribution licensee to provide electric supply line on the application of the unauthorized occupier/unlawful occupier, trespasser, squatter, encroacher of any premises or land.

99. It is a settled legal position of law that writ of mandamus to consider any application under any scheme and/or any policy decision could be issued when the

respondents are bound under the statute to act to discharge their duties entrusted by the statute.

100. Having regard to legal position that the court can not direct to act on breach of statute, I am not inclined to pass any order directing supply of electricity on considering applications filed by the writ petitioners.

101. Having regard to those findings and observations, the point No. II is answered against the writ petitioners. Before parting with the matter submission of Mr. A.K. Ray, senior counsel appearing as Amicus Curie is recorded. It has been submitted by Mr. Ray learned senior Counsel that the word "occupier" u/s 43 of the Electricity Act, 2003 does not and can not include in its meaning an unauthorized occupier, encroacher, trespasser etc and as such the Central Government also by its policy decision can not pass any order in exercise of their power on breach of the meaning of the word "occupier" u/s 43 of the Electricity Act, 2003 by directing to supply electricity to the premises of unauthorized occupiers, encroachers namely the writ petitioners herein. It is contended that the Government can not act in breach of statutory provision namely Section 43 of the Electricity Act as well as the aforesaid Rules of 2006 and its relevant provisions as has been discussed by this Court. Said submission has already been answered by my finding and observation above.

102. Having regard to my finding and observation, the prayers made in these writ applications praying for a writ of mandamus directing the respondents to provide electric supply line to the premises of the writ petitioners can not be allowed and it stands rejected. However, this decision will be subject to the decision of Larger Bench for which matter has already been referred to for a decision under point Nos. I and II above.

103. As such all the issue aforesaid having regard to the greater public interest is referred to the larger bench for adjudication including the point No. III as already framed in addition to the point Nos. I and II for which already observation has been made for reference to the larger bench.

104. Registry to take steps.

105. Having regard to the prayer made by the learned advocate appearing for the respective parties, xerox plain copy of the judgment and order be supplied, duly countersigned by the Assistant Registrar (Court), subject to the undertaking for filing an application to have certified copy of the judgment and order and taking delivery of certified copy on payment of requisite fees.