A MUNICIPAL CORPORATION OF DELHI

v.

THE ASIAN ART PRINTERS (P) LTD. AND ORS. ETC. ETC.

AUGUST 31, 1994

B [B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

The Delhi Municipal Corporation Act, 1957 :

Section 283—Electricity—Charges for supply—Non-residential
C *premises—Mixed Load (HT) connection—Tariff rate—Non-Domestic (Mixed Load HT) Tariff—Clauses (c) and (d)—Interpretation of—Held, the clauses provide for a two-part tariff—Charges payable would be a sum of demand charges "plus" energy charges; and not the amount whichever is higher of the two—Clause (d), i.e. the minimum Bill clause, does not have the effect of modifying or cutting down the meaning or purport of formula contained in*
D *clause (c).*

The respondent was a consumer of electricity under the appellant-Corporation (supplier). It had applied for a "Mixed Load(HT)" connection for "non-residential premises". For the purpose of tariff, the premises fell
E **in the category of "Non- Domestic (Mixed Load HT) tariff". The relevant provisions i.e. clause (c) mentioned tariff as "Demand charges: Rs. 40 per month per KVA or part thereof of the commuted load (as per load in the test report) plus Energy charges: 67 paise per unit": It was further provided that these charges would be without prejudice to the minimum demand as laid down in clause (d) and adjustment clause at (xviii) under**
F **General Conditions of Application. A dispute arose between the parties with respect to tariff amount/charges payable by the respondent each month. The respondents and other consumers filed petitions under section 20 of the Arbitration Act, which were allowed by the single judge of the High Court. The appeals filed by the Corportion and the cross-objections**
G **filed by the consumers were dismissed by the Division Bench of the High Court. Aggrieved, the Corporation filed the appeals by special leave.**

The respondents contended that clause (c) of the "Mixed Load HT" provides that first the demand charges @ Rs. 40 per month per KVA would be ascertained and then the energy charges @ 67 paise per unit would be
H **calculated and whichever was higher would be payable, and in the event of**

both - the demand charges and the energy charges - being equal, the demand charges would be payable. The contention of the appellant was that a sum of both the demand charges and the energy charges-calculated according to the formula provided in clause (c) was the tariff payable by the consumers. A

Allowing the appeals, this Court B

HELD : 1.1. The tariff rate for the Mixed Load HT (other than industrial load) in clauses (c) and (d) provide for a two- part tariff. The first part comprises of *demand charges* and the second part of *energy charges.* The tariff amount shall be determined as an amount which is the total of demand charges *plus* energy charges, calculated according to the formula given in clause (c). This is evident from the word "plus" occurring between the two items i.e. between demand charges and energy charges. When clause (c) says that the charges payable are demand charges plus energy charges, it means just that; it cannot mean demand charges or energy charges whichever is higher. Clause (c) is not capable of any other interpretation, and it admits of no ambiguity whatsoever. The language is clear and not susceptible of any reasonable doubt. The words in clause (c), "the above shall be 'without prejudice' to the minimum demand as laid down in (d)" indicate that the formula given in clause (c) is unaffected by what is stated in clause (d). [14-C-F] C D E

1.2. Clause (d) with the heading "Minimum Bill" states, "the amount of the demand charges based upon the KVA of billing demand", meaning thereby that even in case there is no consumption, the minimum bill shall be the demand charges based upon the KVA of the billing demand. In view of the language of clause (c) it is not possible to read clause (d) as modifying or cutting down the meaning or purport of the formula contained in clause (c). All that it says is that the demand charges based upon the KVA of the billing demand shall at any rate represent the minimum bill. [15-G-H, 16-A-B] F G

1.3. The observation in *Ashok Soap Factory** have no application to the tariff condition relevant in the instant appeals because of the substantial difference in the language employed in the tariff conditions considered in that decision and those concerned in the instant appeals. [22-A-B]

**Ashok Soap Factory* v. *Municipal Corporation of Delhi,* [1993] 3 SCC H

A **37, inapplicable.**

Gulab Rao v. *Municipal Corporation of Delhi,* **AIR (1990) Delhi 249 and** *Texmaco Ltd. and Anr.* v. *The Chief Secretary Delhi Administration,* **CWP No. 1315/91 decided by Delhi High Court on 24.4.91, referred to.**

B **2. The very refernce to arbitration by the High Court pertains precisely to the interpretation of the tariff condition occurring in clauses (c) and (d) applicable to under "Mixed Load HT" Category. Since the controversy has been decided on merits, the reference to arbitration must be deemed to have become unecessary and infructuous. [22-C]**

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5826-33 & 5834-36 of 1994.

From the Judgment and Order dated 25.4.91 & 24.7.91 of the Delhi High Court in F.A.O. (OS) Nos. 223-30/90 & Suit Nos. 2385, 2893 & 2896 D of 1990.

M.K. Banerjee, Attorney General, Ashwani Kumar, Praveen Kumar and Virender Kaushal for the Appellant.

H.N. Salve, Harish Malhotra, S.P. Sharma and R.P. Sharma for the E Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard the learned Attorney General and Sri Ashwini Kumar for the appellant and Sri Harish Salve F for the respondents.

Common questions arise in these appeals. For the sake of convenience, we would refer to the facts in civil appeal arising out of S.L.P. (C) Nos. 14140-47 of 1991. The appeal is directed against the judgment and order of a Division Bench of the Delhi High Court dismissing the G appeal preferred by the appellant, Municipal Corporation of Delhi (DESU) - as well as the cross objections preferred by the respondent. The appeal and cross objections were preferred against the judgment of a learned Single Judge of the Delhi High Court dated 21st Novermber, 1990 allowing the petition - and a large number of similar petitions - filed by the H respondent - and other consumers - under Section 20 of the Arbitration

Act and referring the dispute between the parties to arbitration. The learned Single Judge directed further that pending the arbitration proceedings before the Arbitrator, the consumer shall not be made to deposit the disputed amount. It was, however, observed that in case it is ultimately held that the consumer is liable to pay the said disputed amount, he shall pay the same with interest @ 12% p.a.

The respondent is a consumer of electricity. He had applied for Mixed Load (HT) Connection for 'non-industrial' purposes. The dispute between the parties is with respect to the calculation of the tariff amount/consumption charges payable by the respondent each month. In short, the dispute pertains to interpretation of the relevant tariff condition in the Tariffs notified under Section 283 of the Delhi Municipal Corporation Act by the Municipal Corporation of Delhi (DESU) for the year 1990-91. The same are supplied to us, as a printed booklet, by the learned Attorney General, appearing for the appellant. We shall briefly refer to the relevant provisions therein.

Under the sub-heading "premises", three expressions, viz., "premises", "industrial premises" and "non-industrial premises" are defined. The respondent's premises are admittedly 'non- industrial premises'. Under the sub-heading "General Conditions of Applications", besides providing certain general conditions, a few more expressions are defined. Clause (i) of the General Conditions says that supply of electricity in all cases is subject to the execution of agreements including compliance of commercial formalities. Clause (ii) says that "these tariffs are subject to the provisions of the 'Conditions of supply' and 'Scale of miscellaneous charges' relating to the supply of electricity issued by the Undertaking or any modification thereof as are enforced from time to time and the Rules and Regulations made or any order issued thereunder or any subsequent amendments or modifications thereof so far as the same are applicable." Clause (iii) says that all loads above 100KW under any category of supply shall be given on H.T. Clause (iv) clarifies that "the minimum charges/demand charges exclude meter rent, electricity taxes and other charges which shall be charged separately as in force from time to time depending upon the character of service". Clauses (v) to (viii) define the expressions "connected load", "sanctioned load", "contract demand" and "maximum demand" respectively. Clause (ix) provides that wherever the contract demand has been given in KW, the contract demand in KVA for tariff purposes shall be determined

A by adopting the power factor as 0.85. For the purpose of tariff rates, the consumers are divided into domestic, non-domestic, mixed load HT, small industrial power (SIP) and large industrial power (LIP) categories. Besides the above, separate tariff rates are notified for agriculturists and certain other consumers with whom we are not concerned. So far as domestic
B supply is concerned, the character of service is single phase 230V or three phase 400V. The tariff prescribed is what may be called 'single part tariff'. It is @ .27p per unit on first 100 units per month, thirty two paise per unit on next 100 units per month and seventy five paise per unit on all consumption above 200 units per month. This is, of course, subject to minimum charges prescribed therein. In the case of non-demestic L.T. supply, dif-
C fernet rates are fixed which we need not refer to.

Now coming to the Mixed Load HT with which we are concened, this is "available to consumers having connected load (other than Industrial Loads) above 100KW, for lighting, fan, heating and power appliances in all Non-Domestic establishments as categorised in Non-Domestic (Mixed
D Load HT) tariff". The character of service is A.C. 50 cycles, 3 phase, 11KV. The tariff mentioned under clause (c) and the 'minimum bill' mentioned in clause (d) may now be set out in full from page 13 of the booklet* :

"(c) Tariff :

E

Demand Charges :
Rs. 40.00 per month per KVA or part thereof of the committed load (as per load in the test report)

Plus

F

Energy Charges;

67 paise per unit;

G The above shall be without prejudice to the minimum demand as laid down in (d) below and adjustment clause at (xviii) under General Conditions of Application.

---

* We are referring to the pages of the booklet bacause of the confusing manner in which the several tariff conditions are enumerated. This is being done to avoid any confusion or mix-up between tariffs applicable to 'Mixed Load HT' and the tariffs application to
H 'Large industrial Power' (L.I.P.)

(d) Minimum Bill : A

The amount of the demand charges based upon the KVA of billing demand."

It is the interpretation of above two clauses - (c) and (d) - which falls for consideration in these appeals. Though it is not strictly relevant for the B purpose of these appeals, it has become necessary to notice the tariff rate prescribed for large industrial power category inasmuch as a decision rendered by this court with reference to a Note appended to the L.I.P. tariff rates (affirming the decision of the Delhi High Court) is made the sheet-anchor of the respondents' case which has been upheld by the learned Single Judge and affirmed by the Division Bench of the Delhi High C Court in the orders under appeal herein. In the case of Large Industrial Power (L.I.P.) also, the character of service is A.C.50 cycles, 3 phase, 11KV. The tariff for LIP category is mentioned in clauses (c) and (d), occurring at page 16 of the booklet. They read as follows :

"(c) Tariff : D

Demand Charges :

Rs. 40 per month per KVA or part thereof of the committed load (as per load in the test report) E

plus

Energy Charges :

(i) First 5,00,000 units per months at 85 paise per unit.

F

(ii) All above 5,00,000 units per month at 84 paise per unit.

Subject to :-

a maximum over all rate of Rs. 1.10 per KWH only for *bonafide* use of supply without prejudice to minimum pay- G ment as laid down in item (d) below and adjustment clause at (xviii) above under General Conditions of Application.

(d) Minimum Bill :

The amount of demand charges will be based upon the KVA of H

A the committed load (as per load in the test report)."

A Note is appended to the above provisions. It is applicable to furnaces only. It reads :

> "Note – In the case of furnaces, the above tariff and stipulations of
> B LIP will also be applicable with further provision of clause of Minimum Consumption Guarantee @ Rs. 340 per KVA or part thereof per month." (Printed at page 18 of the booklet)

Now coming back to the tariff rate for the Mixed Load HT (other
C that industrial load) with which we are concerned herein clauses (c) and (d) set out hereinbefore (at page 13 of the booklet) provide for a two-part tariff. The first part comprises of *demand charges* and the second part of *energy charges*. The demand charges are calculated @ Rs. 40 per month for KVA or part thereof of the committed load (as per load in the test report) while the energy charges are calculated @ 67 paise per unit. In
D other words, the tariff amount shall be determined as an amount which is the total of demand charges *plus* energy charges. This is evident form the word "plus" occurring between the two items, i.e., between demand charges and energy charges. Having so set out the above formula, clause (c) further says that "the above shall be without prejudice to the minimum demand as
E laid down in (d) below and adjustmant clause at (xviii) under General Conditions of Application." it is agreed between the parties that the adjustment clause at (xviii) under General Conditions of Application is not relevant for our purposes. Nov what do the words "the above shall be *without prejudice* to the minimum demand as laid down in (d) below" signify? The words "without prejudice" indicate that the formula indicated
F in clause (c) is unaffected by what is stated in clause (d). Clause (d) reads: "Minimum Bill : The amount of the demand charges based upon the KVA of billing demand".

The main dispute between the parties revolves around the meaning
G and purport of clause (c). According to the Respondents- consumers, it says – 'first ascertain the demand charges @ Rs 40 per month per KVA; then ascertain the energy charges @ 67 paise per unit actually consumed; if the energy charges are less than the demand charges, demand charges in full are payable; if the energy charges and demand charges are equal, only the demand charges are payable; if, however, the energy charges
H exceed the demand charges, then only the energy charges are payable

inasmuch as demand charges get merged with energy charges'. A

On the other hand, the appellant-supplier says that clause (c) provides for a two-part tariff; both the demand charges and energy charges have to be calculated according to the formula prescribed in clause (c) and then both have to be added together; the total so arrived at is the tariff charges payable by the consumer; this is the plain meaning of the clause B as disclosed by the use of the word "plus" between demand charges and energy charges.

It would be seen immediately that the interpretation placed by the respondents-consumers on clause (c) has the effect of completely over- C looking and nullifying the expression "plus" in clause (c). According to the respondents' interpretation, it ceases to be a two-part tariff. It indeed amounts to re-writing the clause. If the respondents' interpretation is to be accepted, the clause should read like this :

"Demand Charges : D

Rs. 40.00 per month per KVA or part thereof of the committed load (as per load in the test report)

or

E

Energy Charges :

67 paise per unit,

whichever is higher."

F

We do not think that such a course is permissible to us. When clause (c) says that the charges payable are demand charges *plus* energy charges, it means just that; it cannot mean demand charges or energy charges whichever is higher. The words in clause (c) to the effect "the above shall be without prejudice to the minimum demand as laid down in (d) below...." G make no difference to the above understanding. Clause (d) carries the heading "Minimum bill". It reads : "the amount of the demand charges based upon the KVA of billing demand". This only means that even in case there is no consumption, the minimum bill shall be the demand charges based upon the KVA of the billing demand. It may be reiterated that according to clause (c), the formula prescribed therein (demand H

A charges plus energy charges) is "*without prejudice* to the minimum demand as laid down in (d) below". In the face of these words, it is not possible to read clause (d) as modifying or cutting down the meaning or purport of the formula contained in clause (c). Clause (d) does not purport to do any such thing. All that it says is that the demand charges based upon the KVA of the billing demand shall at any rate represent the minimum bill. We are, therefore, of the opinion that clause (c) of the Mixed Load HT is not capable of any other interpretation than the one placed by us and that it admits of no ambiguity whatsoever. The language is clear and not susceptible of any reasonable doubt.

C The case of the repondents-consumers is based not upon the language of clauses (c) and (d) but entirely upon certain observations made by the Division Bench of the Delhi High Court in *Gulab Rai* v. *Municipal Corporation of Delhi,* A.I.R. (1990) Delhi 249=42 (1990) D.L.T. 121, and the decision of this Court in *Ashok Soap Factory* v. *Municiapl Corporation of Delhi,* [1993] 3 S.C.C. 37, affirming the same on appeal. It has, therefore, become necessary to examine the said decisions - in particular the decision of this Court - closely to ascertain their ratio and the principles enunciated therein. For the sake of convenience, we shall refer to the decision of this Court in *Ashok Soap Factory.*

E The challenge in the writ petitions (filed in the Delhi High Court) was to the resolution of the Municipal Corporation of Delhi whereby it approved the proposal of the Delhi Electricity Supply Committee (DESU) to enhance 'minimum consumption guarantee charges' from Rs. 40 per KVA to Rs. 340 per KVA in respect of arc/induction furnaces. Arc/induction furnaces are necessarily units having Large Industrial Power connections. Arc furnaces consume electricity in bulk, i.e. in very large quantities. Many of these furnances were indulging in several fraudulent practices and were showing very low consumption than their capacity and working warranted. It had become necessary to check these mal-practices which were causing substantial financial loss to the Corporation. With a view to remedy the situation, the demand charges in the case of furnaces alone was raised from Rs. 40 per KVA to Rs. 340 per KVA by virtue of the note referred to above. In the case of all other LIP service holders, the said enhancement was not applicable. It is the said enhancement which was questioned by the furnance-holders in writ petitions filed in Delhi High Court. The contentions raised by them, as may be culled out from the judgment of this Court

in *Ashok Soap Factory,* are the following : A

(1) The decision to increase minimum charges, i.e., demand charges is contrary to Section 21(2) of the Indian Electricity Act, 1910. Without the approval of the State Government, no such enhancement could have been effected (*vide* paras 16 and 17). The contention was rejected by this court in paragraphs 22 and 23 holding that where the licencee is the local B authority, the said requirement is not attracted.

(2) The minimum guarantee charges can only be levied under the proviso to Section 22 of the Indian Electricity Act, 1910. In other words, the licencee can only charge that amount which will give him a reasonable C return on the capital expenditure and covers standing charges incurred by it in order to meet the possible miximum demand. The Corporation has failed to satisfy that the said enhancement from Rs. 40 to Rs. 340 was required for the above purposes (*vide* para 18). This contention was rejected in paragraphs 24 and 25 by pointing out that none of the writ petitions can invoke Section 22 inasmuch as the proviso to said section D "talks about a separate supply unless he has agreed with the licencee to pay him such minimum annual sum". This court pointed out that in the case before them "there is no question of any separate supply or any agreement in relation to minimum annual sum" and hence, Section 22 is wholly inapplicable. E

(3) The third contention was based on Article 14 of the Constitution of India. It was argued that singling out furnaces from out of the class of L.I.P. consumers amounts to invidious discrimination and is, therefore, bad (Para 32). This contention was also rejected.

F

What is significant to notice is that the interpretation of the tariff condition relating to L.I.P. category - prescribed in clauses (c) and (d) at page 16 of the booklet - was not in issue in the said writ petitions or in the appeals before this Court. Neither party raised any contention as to the method of calculating the tariff charges in the case of L.I.P. consumers. G The only question was as to the validity of the said Note which enhanced the Minimum Consumption guarantee in the case of furnances from Rs. 40 per KVA to Rs. 340 per KVA. This Court, however, while dealing with the second contention aforementioned and *after* rejecting the said contention made the following further observations, with respect to the meaning and purport of the two-part tariff provided in the case of L.I.P. category, in H

A paragraph 26 :

> "In the present case, on facts, the challenge is to the tariff. As stated above, the tariff is the two-part tariff system. The two-part tariff system is comprised of two charges – (i) minimum consumption guarantee charges called demand charges and (ii) energy charges for the actual amount of energy consumed. Under this system an LIP consumer pays minimum guarantee consumption charges at the rate fixed by the D.M.C. If the LIP consumer does not consume the specified minimum quantity of electricity or no energy at all even then he has to pay minimum consumption guarantee charges. But in case the consumer consumes more electricity than the minimum, then the consumer pays the electricity charges for the actual consumption of electricity beyond the minimum consumption guarantee charges, in such a manner that minimum consumption guarantee charges are merged in the total bill for electricity consumed. In other words, if a consumer consumes more than the specified minimum quantity of electricity then, in effect, he will pay for electricity which is actually consumed by him. As stated earlier, the appellants have obtained licences for the supply of electricity to a sanctioned load or more than 100 KW and they fall in the category of LIP and the two-part tariff is applicable to them. For the period 1985-86 to 1988-89 the respondents had fixed rates of minimum consumption guarantee charges at the rate of Rs. 40 per KVA and Rs. 38 per KVA for consumption above 1000KVA."

It is the above observations which were made with reference to the tariff condition relating to L.I.P. category (occurring at page 16 of the booklet) that are relied upon by the respondents-consumers as concluding the issue relating to interpretation of clauses (c) and (d) applicable to "Mixed Load HT", non-industrial connections (occurring at page 13 of the booklet) as well. We do not find it possible to agree for more than one reason. Firstly, the relevant tariff condition (tariff condition applicable to L.I.P. category, printed at page 16 of the booklet) is not correctly quoted (in para 7 of the judgment). The all-important word "plus" in between the Demand Charges and Energy Charges is omitted in the tariff condition as extracted in para 7. This may be because the interpretation of the tariff condition was not in issue in the appeals. Apparently, the said clauses (c)

and (d) were taken from the High Court judgment in *Gulab Rai* where too the said clauses are extracted with the same significant omission. The tariff conditions - clauses (c) and (d) - as extracted in paragraph (7) of the judgment of this Court read thus :

"(d) Tariff

Demand Charges

First 1000 KVA of Billing demand for for the month	Rs. 40.00 per KVA or thereof
All above 1000KVA of billing demand for the month	Rs. 38.00 per KVA or part thereof

First 5,00,000 units per month at 85 paise per unit Subject to :

a maximum overall rate of Rs. 1.10 per KVA without prejudice to the minimum payment as laid down in item (g) below and adjustment clause at (xvii) above under General Conditions of Applications."

Item (g) of the said tariff prescribed that the minimum bill would be amount of the demand charges based upon the KVA of billing demand. Item (g) reads as under :

"(g) Minimum Bill

The amount of the demand charges based upon the KVA of bill demand."

Not only is the all-important word "plus" is missing but the small sub-heading "Energy charges" is also missing before the words "First 5,00,000 units per month.....". Evidently, the observations in para (26) are coloured by and based upon the said accidental incorrect rendering of the relevant tariff condition. As a matter of fact, the observations in para 26 are in affirmation of the observations to the same effect in the judgment of the Delhi High Court in the judgment under appeal therein. The Delhi High Court judgment under appeal in *Ashok Soap Factory* is reported as *Gulab Ram* v. *M.C.D.*, in A.I.R. (1990) Delhi 249 - a decision rendered by B.N. Kirpal and C.L. Chaudhary, JJ.

A Secondly, it may be noticed that the tariff condition in the case of Large Industrial Power category contains a ceiling which is not found in the case of Mixed Load HT (non-industrial) category. In the case of LIP category, the ceiling is provided in the following words occurring in clause (c): ".....subject to a maximum over-all rate of Rs. 1.10 per KWH only for *bona fide* use of supply without prejudice to minimum payment as laid down in item (d) below and adjustment clause at (xviii) above under General Conditions of Applications". That the said 'ceiling' was strongly relied upon by the appellant-consumer in *Ashok Soap Factory* is evident from para (8) where the contention of the appellant was noted in the following words :

> "In terms of the tariff, the maximum charges cannot be more than the overall rate of Rs.1.10 per unit consumed. Therefore, 80,000 units consumed would be chargeable at the maximum rate of Rs. 1.10 per unit which works out to Rs.88,000. Since the amount of Rs.1,08,000 is higher than Rs. 88,000 i.e. by Rs. 20,000 a rebate of Rs.20,000 would be given to the consumer and the consumer would be billed only for Rs. 88,000. It would be evident from the above illustration that the consumer, in any event, has to pay the minimum guarantee charge even if the value/price of the energy actually consumed is more than the minimum consumption guarantee charges, the amount of the minimum consumption guarantee gets merged into/with the energy charges".

As pointed out hereinabove, neither the words (imposing a ceiling) nor any words to that effect are to be found in the tariff condition (at page 13 of the booklet) with which we are concerned in these appeals. In our respectful opinion, the observations in para (26) of this court's judgment in *Ashok Soap Factory* are attributable to the said "ceiling" coupled with the omission of the all-important word "plus" in the tariff conditions as placed before this court.

In this context, it is relevant to notice another Deivision Bench decision of the Delhi High Court rendered by B.N. Kirpal and D.K. Jain, JJ. in *Taxmaco Ltd. & Anr.* v. *The Chief Secretary, Delhi Administration,* CWP No. 1315/91 decided on April 24, 1991. (B.N. Kirpal is also the member of the Division Bench which rendered the decision in *Gulab Rai*). *Taxmaco* was concerned with the tariff condition applicable to L.I.P.

consumers for the year 1991-92. In the tariffs notified for the said year, the words "subject to a maximum over-all rate of Rs. 1.10p per K.V.A...." occurring in cluase (c) applicable to L.I.P. category were deleted. In view of the said deletion, it was held by the Division Bench in *Taxmaco* that unlike during the previous year, for the year 1991-92 demand charges are payable *in addition* to energy charges. The following two paragraphs from the judgment are apposite :

> "For the immediately preceding year, for the large industrial power users like the petitioners tariff was, *inter alia,* being charged on the basis of demand charges plus energy charges. For the year 1990-91, it was further prescribed that the maximum overall rate would be Rs. 1.10 per KWH. The effect of the tariff for the year 1990-91 was that the consumers had to pay atleast minimum demand charges. In case the consumption was below the sanctioned load but was in excess of the connected load, then it is in effect, the actual consumption of which payment was being made.
>
> The position in the year viz. 1991-92 is same to the extent that there is a levy of demand charges plus energy charges. In this year also, the minimun payable is the demand charges if the energy is not consumed upto the connected load. The only difference in this year is that whereas for the year 1990-91, there was maximum overall rate of Rs.1.10 per KWH, this year that maximum has been done away with. *The effect may be that in addition to the demand charges, the energy charges have also to be paid.*"
>
> (emphasis added)

It is thus clear from the decision of the Delhi High Court that its earlier decision in *Gulab Rai* was mainly because of the said words of "ceiling"; when the ceiling was removed, it was held that in addition to demand charges energy charges are also payable. We may reiterate in the case of tariff condition applicable to 'Mixed Load HT', with which we are concerned in these appeals, there are no words of ceiling. We must, however, hasten to add that we may must not be understood as holding or affirming that the said words of 'ceiling' to mean that only the highest of the two charges (demand charges and energy charges) alone is payable. We need express no opinion on the said question in these appeals for the simple reason that that question does not fall for our consideration.

A For all the above reasons, it must be held that the observations in paragraph (26) in *Ashok Soap Factory* have no application to the tariff condition with which we are concerned because of the substantial difference in the language employed in the relevant tariff conditions considered in these appeals. No relief can be granted to the respondents-consumers herein on the basis of the said observations. The same comment B holds good for the decision of the Delhi High Court in *Gulab Rai.*

Now the very reference to arbitration by the Delhi High Court in these and other connected matters pertains precisely to the interpretation of the tariff condition occurring in clauses (c) and (d) applicable to under C "Mixed Load HT" category. Since we have answered the question on merits, the reference to arbitration must be deemed to have become unnecessary and infructuous. The restraint order/stay order passed by the High Court pending disposal of the arbitration proceedings also falls to ground and is vacated herewith.

D The appeals are accordingly allowed and the judgment of both the learned Single Judge and the Division Bench of the Delhi High Court affirming it - which are the subject matter of these appeals - are set aside. The appellant shall be entitled to their costs. Appellant's costs assessed at Rs. 20,000 consolidated.

E R.P. Appeals allowed.