

HIGH COURT OF MADHYA PRADESH**Bench: Justices Vivek Agarwal and Avanindra Kumar Singh****Date of Decision: 3rd May 2024**

WRIT PETITION NO. 18637 OF 2015

**HIGH COURT ADVOCATES BAR ASSOCIATION & ANR. ...PETITIONERS
VERSUS****STATE OF MADHYA PRADESH & ORS. ...RESPONDENTS****Legislation:**

Sections 3, 42, 43, 45, 46, 50, 56, 65 of the Electricity Act, 2003

Section 49(1)(c) of the Advocates Act, 1961

Subject: Writ petition challenging the disconnection of electricity supply to the Bar Association and the demand for payment of electricity bills.**Headnotes:**

Electricity Supply – Disconnection and Payment of Bills – The petitioners challenged the disconnection of electricity supply and the demand for payment of electricity bills by the M.P. Madhya Kshetra Vidyut Vitaran Company Limited and the Executive Engineer – They sought a direction for the State to pay the electricity bills as per the announcement made by the Chief Minister in the Adhivakta Panchayat [Paras 1-3, 13].

Judicial Review and Statutory Provisions – The court emphasized that the supply of electricity is governed by statutory provisions under the Electricity Act, 2003, which includes the obligation of users to pay for the electricity consumed – The court noted that any public announcement without statutory backing cannot override the legal provisions mandating payment for electricity [Paras 15-24].

Economic Impact and Public Policy – The court referred to studies and reports highlighting the adverse impact of providing free electricity, emphasizing the financial strain on distribution companies and the need for efficient use of resources – The court noted that providing free electricity to Bar Associations without statutory support would set a negative precedent and affect the economic health of the State [Paras 41-44].

Decision: The writ petition was dismissed – The court held that the petitioners were not entitled to free electricity and must pay for the electricity consumed as per the tariffs – The court emphasized that the contractual relationship between the petitioners and the electricity company must be honored, and the demand for free electricity was unjustified [Para 48].

Referred Cases:

- Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors., (2013) 5 SCC 427
- S. Subramaniam Balaji v. Government of Tamil Nadu & Ors., Civil Appeal No. 5130/2013
- Swastic Industries v. Maharashtra State Electricity Board, (1997) 9 SCC 465
- Vinod Kumar Bhardwaj v. State of M.P. & Ors., (2013) 1 MPLJ 597
- O.P. Sharma & Ors. v. High Court of Punjab and Haryana, (2011) 6 SCC 86
- Supreme Court Bar Association & Ors. v. B.D. Kaushik, (2011) 13 SCC 774
- Usha Mehta v. Government of Andhra Pradesh & Ors., (2012) 12 SCC 419

Representing Advocates:

For Petitioners: Shri Manoj Sharma, Sr. Advocate with Shri Rajmani Mishra, Advocate, and Shri K.N. Fakhruddin, Advocate

For Respondents No. 1 and 2: Shri Swapnil Ganguly, Dy. Advocate General

For Respondents No. 3 and 4: Shri Mukesh Agrawal, Advocate

For Intervenors: Shri Satish Verma, Advocate, Shri Ravindra Kumar Gupta, Advocate, and Shri V.N. Mishra, Advocate.

ORDER

1. This writ petition is filed by the High Court Advocates Bar Association, Jabalpur as petitioner No.1 and M.P. High Court Bar Association as petitioner

No.2 claiming that they are registered Associations of Practicing Advocates in the High Court at Jabalpur. Petitioner No.2- M.P. High Court Bar Association was established in the year 1956 when, in newly formed State of Madhya Pradesh, the M.P. High Court was established. The date of formation or registration of petitioner No.1 is not mentioned in the body of the petition but being the lead petitioner, riding on the back of parent association namely M.P. High Court Bar Association and placing reliance on the decision of Division Bench of this High Court in the case of **Vinod Kumr Bhardwaj Vs. State of M.P. and others, (2013) 1 MPLJ 597**, prayer is made that this writ petition in the form of PIL be entertained and action of respondents No.3 and 4 namely M.P. Madhya Kshetra Vidyut Vitaran Company Limited and the Executive Engineer (Urban Division East) of M.P. Poorva Kshetra Vidyut Vitaran Company Limited, Jabalpur in disconnecting the electricity supply of the Bar Association and seeking recovery of electricity bills after the judgment passed by this Court and Hon'ble Apex Court, be set aside and respondents No.1 and 2 i.e. the State of Madhya Pradesh through Chief Secretary and the Principal Secretary, Department of Law and Legislative Affairs, Vallabh Bhawan, Bhopal be directed to make payment of the electricity bills of the Bar Associations to respondents No.3 and 4 as per the statement made by the Government of Madhya Pradesh before the Hon'ble Supreme Court. It is further prayed that respondents No.3 and 4 be directed to examine the electricity bills of the petitioners-association and not to recover any electricity charges after the judgment in the case of **Vinod Kumar Bhardwaj (supra)** and to refund the electricity bills paid by the petitioners after the said judgment. It is also prayed that respondents No.3 and 4 be directed to restore electricity forthwith and not to disconnect the same in future till the matter is adjudicated by respondents No.1 and 2 so that the public and litigants are not put to any inconvenience which hampers the administration of justice.

2. To substantiate the aforesaid reliefs besides placing reliance on the judgment of Division Bench of this High Court in **Vinod Kumar Bhardwaj (supra)**, reliance is placed on the order of Hon'ble Supreme Court dated 28/04/2014 wherein the State had challenged the orders of the Division Bench in **Vinod Kumar Bhardwaj (supra)** by filing Petition (s) for Special Leave to Appeal (Civil) No.(s).14402/2013 wherein on the basis of the letter dated 27/05/2013, the Government of Madhya Pradesh, Department of Law and

Legislative Affairs communicated to the Working Secretary, M.P. State Bar Council, Hon'ble Supreme Court passed the order as follows :

"Sub: In relation to the announcement bearing No. A-2480 made by Hon'ble Chief Minister in the Adhivakta Panchayat for payment of Electricity Bills. In relation to the abovementioned subject it is most respectfully submits that in furtherance of the announcement No. A-2482 i.e. "the proposal pertaining to payment of Electricity Bills of the places used for the sitting of the clients in the Court compound/premises will be examined" made by the Hon'ble Chief Minister in the Adhivakta Panchayat, the State Government after examination has already allotted Rs. 65,59,657/- to the Hon'ble High Court vide department memo dated 07/05/2013.

2. Learned senior counsel and counsel for the parties agree that special leave petition may be disposed of in terms of the above communication. 3. 3. The prayer made by the learned senior counsel and counsel for the parties is fair and reasonable. It is observed that the impugned order of the High Court is rendered unnecessary in view of the above communication sent by the State Government to the Working Secretary, Madhya Pradesh State Bar Council.

4. In our opinion, no further order needs to be passed in the special leave petition. It is disposed of accordingly."

In view of said communication from the State, it is observed by the Hon'ble Supreme Court that the order of the High Court is rendered unnecessary in view of the above communication sent by the State Government to the Working Secretary, Madhya Pradesh State Bar Council and after recording a finding that no further orders were needed to be passed in the Special Leave Petition, SLP was disposed of.

3. It is submitted that recovery of electricity bills by respondents No.3 and 4 is illegal, arbitrary and contrary to the judgments passed by this Court and the Hon'ble Supreme Court. Bar Associations are having their accommodation in the High Court building itself within the High Court premises. These associations are providing several facilities like conference room, library, canteen etc., therefore, the State Government is under obligation to make the said payment and respondents No.3 and 4 cannot

make any recovery of electricity bills from the petitioners-associations. It is also submitted that the disconnection of electricity connection was illegal and arbitrary.

4 . Shri Mukesh Agrawal, learned counsel for respondents No.3 and 4, submits that there is nothing like free electricity. On the interim orders of the High Court electricity supply was never disrupted. There is high infrastructural cost starting from production to supply. Petitioners-associations' Office, on inspection, was found to contain 16 AC, 184 tubelights, 5 computers, 2 T.V. sets, 180 fans, 3 watercoolers, 4 photocopy machines, one oven, one fridge and several CFL consuming electricity having high total consumption. It is also submitted that petition has been filed without making any representation to the State Government. Electricity Authorities made correspondences with the Registrar General of the High Court and on receiving a communication from the Registrar General of the High Court that the petitioners are liable to make payment of the electricity charges and as per the undertaking before the Hon'ble Supreme Court, the State Authorities in terms of declaration of the Chief Minister in *Adhivakta Panchayat* had decided to make payment of the electricity bills of the places used for sitting of the clients in the Court compound/premises commonly known as 'Suitor's Shed'. It is evident that it is not meant for Bar Rooms and, therefore, prayer is made that respondents No.3 and 4 are interested in clearing of their dues whether they are paid by the State Government or the respective Bar Associations i.e. not a matter of their concern. In support, reliance is placed on Annexure-R/2 which is the communication dated 30/09/2015 made by the Registrar General to the Secretary of M.P. High Court Bar Association with a copy forwarded to respondent No.4.

6. Respondents No.1 and 2 have also filed a very sketchy reply and this reply filed under the affidavit of one Shri R.P. Gupta, S/o Shri M.L. Gupta, Under Secretary, Law and Legislative Affairs Department, Vidhyachal Bhawan, Bhopal, in fact in para-7 admits that the amount of electricity charges will be reimbursed as per the announcement in accordance with the procedure prescribed and they have already taken effective steps as per the announcement made by the Chief Minister. Thereafter respondents No.1 and 2 have filed additional return and have submitted that in terms of the undertaking given before the Hon'ble Supreme Court as was communicated to the State Bar Council, they had allocated a sum of Rs.65,59,657/-.

7 . Shri Manoj Sharma, learned senior counsel for the petitioners, in his turn, submits that petitioners have filed a rejoinder pointing out that lawyers are the Officers of the Court having duty as important as that of a Judge and looking to the large responsibility which they discharge towards the society and the vital role played by them in preservation of social justice system in terms of the judgment of Hon'ble Supreme Court in the case of **O.P. Sharma and others Vs. High Court of Punjab and Haryana, (2011) 6 SCC 86** so also in light of the judgment of Hon'ble Supreme Court in the case of **Supreme Court Bar Association and others Vs. B.D. Kaushik, (2011) 13 SCC 774**, it is prayed that the electricity bills be directed to be paid by the State Government and no liability be fastened on the shoulders of the petitioners.

8. In para-7 of the rejoinder, it is submitted that projection about uses of air conditioners etc by the respondents No.3 and 4 is shocking as if they are trying to demonstrate that the petitioners-bar associations are operating or running some sort of entertainment centre. It is pointed out that Bar Associations' Halls

i.e. Golden Jubilee Hall, Silver Jubilee Hall and Bar Association Halls are not enough to meet out the demands of space and sitting arrangement for all the members, therefore, other places are also required to be given free electricity.

9. Shri Mukesh Agrawal, learned counsel for respondents No.3 and 4, in his turn, submits that electricity is not a free commodity. It is to be paid as advocates cannot be subsidised in the matter of use of electricity. He further submits that as per his information, High Court Bar Association as well as High Court Advocates Bar Association, both, had taken electricity connection in their respective names and were paying electricity charges till decision in the case of **Vinod Kumar Bhardwaj (supra)**. Thus, change of their stand in terms of **Vinod Kumar Bhardwaj (supra)** is arbitrary and illegal.

10 . Shri Satish Verma, learned counsel for the intervenor, submits that electricity charges are to the tune of Rs.One crore in last eight years and it is public money, therefore, not paying the electricity dues is a huge loss to the public exchequer. It is further submitted that there is no public interest in filing this petition and petitioners have successfully managed 36 adjournments in last more than seven years after getting interim order on 28/10/2015. List of adjournments starting from 28/10/2015 till 15/11/2022 is brought on record as Annexure-IA/2. It is also submitted that since declaration of the Chief Minister and the State Government was for free

power to the places used by litigants/public at large and not for the places exclusively used by the Bar Associations and in particular unrecognised Bar Association like petitioner No.1, they cannot be given a right to enjoy free electricity.

11. Shri Ravindra Kumar Gupta, who is also an intervenor in the matter has enclosed a leaflet which was floated as a charter of demands before the Chief

Minister and points out that there was no such demand like free electricity in the charter of demands. Thus, Bar Associations are now estopped from raising a

plea of supply of free electricity.

12. Secretary, Law and Legislative Affairs Department, Bhopal has filed his affidavit vide I.A. No.36/2024 clearly pointing out that a coordination from the Registry of the High Court was made by the Office of the Principal Secretary, Law and Legislative Affairs Department, Bhopal and, in turn, response was received on 02/02/2024 (Annexure-RR/1) that for various District Bar Associations and Tehsil Bar Associations, electricity bills are not being provided by the State Government but only places used as Suitor's Shed is being paid by the State Government. It is pointed out that earlier also W.P.

No.2165/2013 (PIL) was filed by one Shri Rameshwar Neekhra as enclosed as Annexure-RR/2 claiming the same relief that respondents No.1 and 2 may kindly be directed to exempt the Bar Associations over the whole of Madhya Pradesh from payment of electricity bills and respondent No.1 be directed to make good the monthly electricity bills but vide order dated 30/09/2014 passed by the Division Bench of this High Court in terms of the order dated 28/4/2014 passed in SLP (Civil) No.14402/2013, petition was disposed of in the same terms.

13. Registrar General of Madhya Pradesh High Court has also filed copy of resolution of Administrative Committee (HJS) dated 31/08/2015 wherein a resolution was passed to the effect that High Court has no role in the matter concerning payment of electricity bills of the High Court Bar Associations and it was resolved that the bar associations, of the Principal Seat at Jabalpur, its Benches at Indore and Gwalior may be forthwith informed to pursue the matter directly with the State Government for payment/reimbursement.

14. Registrar General also enclosed copy of the policy document regarding construction of Advocates' Chamber at the District Court Premises in the State of Madhya Pradesh. They have also enclosed list of places where electricity charges are being reimbursed for Suitor' Shed.

15. After hearing learned counsel for the parties and perusing pleadings available on record, it is profitable to refer the relevant provisions in this behalf. Bar Council of India under Section 49(1)(c) of the Advocates Act, 1961 has framed standards of professional conduct and etiquette to be observed by the advocates. It provides that *An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.* Thus, it is evident that advocate has to conduct himself fearlessly and his conduct should be lawful and normal for a person who is not even a member of bar.

16. In the case of **O.P. Sharma and others (supra)**, Hon'ble Supreme Court has held that *advocates have an obligation to uphold rule of law and ensure that public justice system functions at its full potential.* It is further held that *members of legal profession have a social duty to show people a beacon of light by their conduct and actions.* In para-37 of the said judgment, it is held that *all Court functionaries whether advocates, Judges or staff ought to act in accordance with moral and ethics.*

17. In the case of **Usha Mehta Vs. Government of Andhra Pradesh and others, (2012) 12 SCC 419** while dealing with the facet of Article 14 of the Constitution of India, it is held by Hon'ble Supreme Court that *distribution of State Largesse must be founded on sound, transparent, discernible and well-defined policy known to public at large and in a non-discriminatory and non-arbitrary manner. The State instrumentalities, cannot treat such resources as a private venture, as it would amount to a flagrant violation of the principles of equality.* Thus, it is evident that petitioners, herein, who are representatives

of an intellectual body are in no way entitled to claim benefit of State Largesse at par with Sutor's Shed or free electricity given to marginalized farmers or under privileged section of the society as they are by their profession and education forms a different class which, by no stretch of imagination, will be termed as under privileged section of the society.

18. In the case of **Sudha Vs. President, Advocates Association, Chennai and others, (2010) 14 SCC 114** in para-40, Hon'ble Supreme Court has held that *the legal profession is different from other professions. What the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. The members must maintain their honour by their exemplary conduct both in and outside the Court.*

19. Section 3(1) of the Electricity Act, 2003 provides that the Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. Sub-section (2) of Section 3 provides that Central Government shall publish the National Electricity Policy and tariff policy from time to time. Sub-section (3) of Section 3 provides that Central Government may, from time to time in consultation with the State Governments, and the Authority review or revise the National Electricity Policy and tariff policy referred to in sub-section (1).

20. Part VI of the Electricity Act, 2003 deals with distribution of electricity. Section 42(1) provides that it shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Section 43(1) of the Electricity Act, 2003 provides that save as otherwise provided in this act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. Thus, it is evident that supply of

electricity by the distribution licensee is on the request of the owner or occupier of any premises and there is an obligation to supply electricity.

21. Section 45 of the Electricity Act, 2003 deals with power to recover charges. Sub-section (1) of Section 45 provides that subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by it in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence. Thus, it is evident that supply of electricity is in accordance with tariff fixed from time to time.

22. Section 46 of the Electricity Act, 2003 provides that the State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

23. Section 50 of the Electricity Act, 2003 deals with the Electricity Supply Code and provides that State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

24. Section 56 of the Electricity Act, 2003 deals with disconnection of supply in default of payment. Section 56(1) reads as under :

"Section 56. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with

any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

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

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

25. Section 65 of the Electricity Act, 2003 deals with issue of subsidy by State Government. It deals as under :

“Section 65. Provision of subsidy by State Government:

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction

which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.”

26. The Tariff Policy (para 8.3.4) issued by Government of India in 2016 issued in accordance with Section 3 of the Electricity Act, 2003 provides as under :

“Extent of subsidy for different categories of consumers can be decided by the State Government keeping in view various relevant aspects. But provision of free electricity is not desirable as it encourages wasteful consumption of electricity. Besides in most cases, lowering of water table in turn creating avoidable problem of water shortage for irrigation and drinking water for later generations. It is also likely to lead to rapid rise in demand of electricity putting severe strain on the distribution network thus adversely affecting the quality of supply of power. Therefore, it is necessary that reasonable level of user charges is levied”.

27. Thus, it is evident that Section 65 of the Electricity Act provides that if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence. Thus, it is evident that mere announcement by the functionaries of the State Government is not sufficient but it is required to pay in advance the amount of subsidy to the Distribution Licencee if it intends to do subsidise supply of electricity.
28. Thus, it is evident that statutory provisions contained in the Electricity Act, 2003 contains sufficient safeguards for the Electricity Distribution Company to disconnect the supply in default of payment. Therefore, now the issue which stands crystal clear is that there cannot be any free electricity as far as distribution company is concerned. User has to pay and it cannot avail free electricity as erection of the facilities for generation of electricity and then creation of infrastructure for its distribution has its economic cost and that cost is to be reimbursed as per the Supply Code evolved from time to time with consultation of the State Electricity Regulatory Commission.
29. In the case of **Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427**, in para-24 Hon'ble Supreme Court has held as under :

"24. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice, (*ex debito justicieiae*) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is

clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. (Vide: *Commissioner of Police, Bombay v. Govardhandas Bhanji*,

AIR 1952 SC 16; *Praga Tools Corporation v. Shri C.V*

Imanual & Ors., AIR 1969 SC 1306; Punjab Financial Corporation v. Garg Steel, (2010) 15 SCC 546; Union of India & Ors. v. Arulmozhi Iniarasu & Ors., AIR 2011 SC 2731; and Khela Banerjee & Anr. v. City Montessori School & Ors., (2012) 7 SCC 261)."

30. In para-26 and 27 of the said judgment it is held as under :

" 2 6 . Thus, it is evident that a writ is not issued merely as is legal to do so. The court must exercise its discretion after examining pros and cons of the case.

2 7 . Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced. (Vide: B.N. Nagarajan & Ors., etc. v. State of Mysore and Ors. etc., AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan & Ors., AIR 1967 SC 1910; Secretary, State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806; and Mahadeo Bhau Khilare (Mane) & Ors. v. State of Maharashtra & Ors., (2007) 5 SCC 524)."

31. Thus, it is evident that any public announcement by the then Chief Minister in *Wakeel Panchayat* will, at best, be an executive instruction which has no statutory force and cannot override statutory provisions contained in Electricity Act, 2003.

32. In the case of **Swastic Industries Vs. Maharashtra State**

Electricity Board, (1997) 9 SCC 465, it is held that *Section 24 of the Electricity Act, 1910 makes it clear that right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it.* It is further held that *right to file a suit under Section 60-A of the Supply Act is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under*

Section 24 to make demand for payment of the charges and on neglecting to pay the same, they have the power to discontinue the supply or cut off the supply, as the case may be.

33. As far as the judgment in the case of **Vinod Kumar Bhardwaj (supra)** is concerned, it is a judgment on consent. Shri M.P.S. Raghuvanshi, Additional Advocate General as he was then had given concession as is evident from para-4 of the judgment wherein Hon'ble Division Bench observed as follows :

"4. In the return, the State has opposed the plea of the petitioner, however, during course of arguments, learned Additional Advocate General has produced certain papers to the effect that the process of decision making is going on in regard to payment of electricity bills of bar rooms in the Court premises by the Government. Learned Additional Advocate General informed the Court that a Vakil

Panchayat was held on 12-8-2012 at the residence of Hon'ble the Chief Minister and in the aforesaid Panchayat, Hon'ble the Chief Minister made a declaration that the State Government shall provide the electricity charges of the bar rooms and for the purpose of implementation of the declaration, a committee of Hon'ble the Chief Minister, Chief Secretary, Advocate General and Private Secretary of Law has been constituted and the matter is under active consideration of the Government. Learned Additional Advocate General further produced a letter dated 29-9-2012 written by the Secretary Law and Legislature, State of M.P. to the Registrar General, in which, it is mentioned that how much amount shall be required for the purpose of payment of electricity charges of sitting places of litigants in the Court premises. In this letter, the expenses in regard to providing tube-lights and fans in the Court premises is also included. The Registrar (Establishment) vide letter dated 3-1-2013 informed the Government in regard to amount which would be required for payment of electricity charges in pursuance to the letter of Law Secretary. Learned Additional Advocate General has submitted that on the basis of aforesaid correspondences, a decision would be taken within a certain period and the matter is under active consideration before the Government."

34. Thus, it is evident that there was a kind of concession recorded by the then Additional Advocate General on the premise of which judgment in the case of **Vinod Kumar Bhardwaj (supra)** proceeds. However, the actual proceedings of the Wakeel Panchayat as have been produced by the State Authorities reveal that the decision was only to provide free electricity to Suitor's Shed used by litigants and not bar rooms, therefore, the decision rendered in the case of **Vinod Kumar Bhardwaj (supra)** has neither a precedential value nor any binding affect as it has not taken into consideration the statutory provisions contained in the Electricity Act, 2003.

35. Similarly, in the case of **B.D. Kaushik(supra)** context is different. While dealing with the main issue of "One-Bar-One-Vote" and also the judgment of Delhi High Court in the case of **P.K. Das, Advocate and others Vs. Bar Council of Delhi and others, AIR 2016 Delhi 135** being the issue of allotment of chambers, reference to the context is that *a bar association necessarily means and implies that it is an association representing members regularly practicing in the Courts and responsible for conduct of its members and for ensuring proper assistance to the Court. In consideration thereof, the Court provides space for the Office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the Court, parking place and canteen besides several other amenities.* Thus, it is evident that if there is a mutual understanding to provide certain facilities, that will not become a right in the hands of the members of the association to claim them as freebies.

36. As referred above, judgment in the case of **O.P. Sharma and others (supra)**, clearly highlights the conduct of the members of the bar should be above of what is expected from common public.

37. As per report published in Business Today titled "The Economics of Election Freebies" made a comparative study of freebies being distributed across the State, it quoted that "the Union Finance Minister noted that freebies are being announced across many States without taking their financial feasibility into account. Even the Chief Election Commissioner voiced concerns over this phenomenon and despite Centre's strict adherence to fiscal deficit targets in the previous years and questioning of the freebie culture especially after the debt crisis in neighbouring Sri Lanka an alarm has been raised in regard to logic and justification for such freebies" .

38. The said magazine quoted that “Competitive populism has remained a dominant theme in State elections” It also noted that Supreme Court of India had issued notices to the Madhya Pradesh and Rajasthan Governments, Central Government and the Election Commission on a plea seeking comprehensive guidelines to bar political parties from distributing cash and other freebies at the expense of taxpayers.

39. The Article further quoted a report called State of State Finances 2023²⁴ by PRS Legislative Research, which says that subsidised items can be broadly classified as merit and non-merit goods. “The consumption of certain goods and services such as education and health by an individual may have wider benefits for the society and the subsidisation of such goods can be considered socially desirable.” However, providing subsidies for non-merit goods may not involve wider social benefits, pointing out that in 2022, the Reserve Bank of India had also observed that increasing expenditure on nonmerit subsidies can constrain the space for capital expenditure. The article quoted N.R. Bhanumurthy, Vice Chancellor of Bengaluru-based Dr. B.R. Ambedkar School of Economics University, who said that “it is a freebie as it does not have a long-term impact on growth and development, or on productivity.”

40. The PRS report also noted that several States continue to budget revenue deficit, thus constraining capital outlay. It noted that "over the past several years, States have spent close to 8-9 per cent of their revenue receipts on providing subsidies. States can provide subsidies on various items such as electricity, public distribution system, education, health and transportation. Subsidies form a part of revenue expenditure, which is used for largely noncapital formation items such as payment of salaries, pensions and interest liabilities, and dominates the Budget expenditure. It raised a concern on the basis of the PRS report authored by its researchers Shri Tushar Chakrabarty and Tanvi Vipra expressing that as “a significant portion of such subsidies are spent to provide subsidised or free electricity. Concerns have been raised over rising subsidies for non-merit goods in several States. Providing such non-merit subsidies may constrain the fiscal space available for capital expenditure.” This article quoted M. Govinda Rao, Emeritus Professor at NIPFP, Chief Economic Advisor of Brickwork Ratings, and a member of the 14th Finance Commission, that “People look for short-term benefits and governments want to win elections by giving them at the cost of long-term growth-enhancing

expenditures... People want benefits now though this will burden the future.” Thus, it is evident from the aforesaid article that freebies have long lasting impact on the development of a State or a Nation.

41. Several studies have pointed out the impact of free electricity can be significant and multifaceted. They are as follows :

"Financial strain on DISCOM`s: Providing electricity free or at low tariff places the financial burden on DISCOM`s, which must be borne by governments. If there is any delay in release of funds can severely impact the finances of the DISCOM`s and quality of service, they provide.

Wastage of Natural resources: Free electricity promotes excessive consumption leading of wastage of natural resources due to increased consumption.

Inefficiencies: Consumers might not feel incentivized to conserve energy, resulting in wasteful consumption patterns and reduced overall efficiencies.

Operational Challenges: Rapid rise in demand for electricity due to free electricity programs leads to severe strain on distribution network and accurate demand projection for scheduling of electricity is also difficult.

Hindrance to investment: A lack of revenue from electricity sales can hinder distribution companies' ability to invest in improvement in their network and service.

Difficulty in payment: Due to lack of financial resources, distribution companies find it difficult to pay the generation companies from whom they buy power, thus affecting their financials as well."

42. Sreekumar Nhalur and Ann Josey of Prayas (Energy Group) published an article "Free Power at a Big Price" which was published by 'the Hindu' on 13th October, 2021, dealing with the problems with free power and proposed that good power supply and services are necessary to improve quality of life and

encourage productive activities. This, in turn, requires financially stable distribution companies and accountability measures for quality service for all, especially small and rural consumers. Free or low tariff power is at best a short term relief, which should be provided to those who desperately needed. A Government which has long term interest of the people in mind should work to limit free power beneficiaries. Thus, the article suggests that for overall development limiting free power beneficiaries will help.

43. Lawyers being promoter of development and preservers of democracy are expected to rise above sectorial interest and contribute in all modes of national development. They are the torch bearers and conscious keepers of the people in the democracy in a welfare State and when their role is examined starting from the freedom movement till date, their contribution to the development is immense especially in the form of social service given by them to do *pro bono* cases or to assist the legal aid in the country. Thus, when examined from this perspective, it is evident that they would not like to be part of such scheme which causes overall dent to the national/state interest.

44. In fact, Hon'ble Supreme Court had issued certain directives in the case of **S. Subramaniam Balaji Vs. Government of Tamil Nadu & others (Civil Appeal No.5130/2013)**, as a result of which the election commission added a new chapter to its Model Code of Conduct in February, 2014.

Thereafter Lawyer Ashwani Upadhyay filed a petition in the Supreme Court as PIL opposing the practice of political parties providing or promising freebies to voters and Hon'ble Supreme Court stated that the economy has to strike a balance between money and welfare of the people and advised Government to relook and renew whether they should be giving freebies to people as has been noted by the Maharashtra Economic Development Council in an article titled

"Analysis of Government Freebies in India" 30th November, 2022 by Vaishnavi

Mungale. IOSR Journal of Humanities and Social Science, Vol. 27, Issue-12,

Series-3 (December. 2022) an article titled "Freebies Politics in India and its Political, Economic and Psychological Impact on Voters" by Rohit Kumar,

Assistant Professor, Chandigarh Group of Colleges, Jhanjeri (Mohali) and

Suman Preet Kaur, Assistant Professor of the same College. Reserve Bank of India titled "The State Finances - Risk Analysis" expresses great concern above the financial health of the States such as West Bengal, Punjab, Kerala, Rajasthan and Andhra Pradesh due to their emphasis on social welfare and freebies.

45. According to RBI report, total outstanding liabilities of these four States were greater than the national average of 32%. This article quoted Justices N. Kirubakaran and B.Pugalenth, Judges of Madras High Court stating that freebie culture makes people of Tamil Nadu lazy. Similarly N.K. Singh, Member of the 15th Finance Commission warned that freebies are a "quick passport to fiscal disaster". The article gives example of Sri Lankan economy which recently collapsed and the experience of the people in regard to power outages and a lack of basic necessities such as school, fuel and medicines to highlight that freebies have their long term adverse impact on the economy of the country, therefore, when examined from this perspective, then interest of a section of society cannot dominate the overall goal of national development where challenge is to reduce the freebies and subsidies so to make more of capital expenditure to trigger development of a country. These experts in the field of developmental economics and their experience leads to a singular conclusion that free electricity is neither desirable nor necessary. Policy of the State Government reveals that free electricity was never promised to the lawyers but it was only promised for the needy litigants, therefore, Government in its order confined it to the Suitor's Shed.
46. Secondly, once petitioners had taken a electricity connection and had entered into the arena of contractual relationship with the electricity company, then it cannot bypass its contractual liability and seek shifting of liability to the shoulders of the State Government. Petitioners' demand for payment of electricity bills of the Bar Associations to respondents No.3 and 4 by the State when examined from the aforesaid perspective of developmental economics & social well being and also the overall economic health of the country cannot be said to be justified.
47. Prayer for refund of the electricity bills paid by the petitioners to respondents No.3 and 4 is also not justified. It has no legal sanctity.
48. Accordingly, this writ petition fails and the same is hereby dismissed.

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