(2009) 09 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Anil Spinners APPELLANT

Vs

Uttar Haryana Bijli Vitram Nigam Ltd. and Others RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:
Electricity Act, 2003 — Section 43, 46

Citation : (2009) 156 PLR 678

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Judgement

Jasbir Singh, J.—This order will dispose of Civil Writ Petitions No. 13010 of 2007, 12794, 11672 to 11675, 11678, 11680, 11683, 11714, 11883,, 13064,13587, 13814,13830, 14169, 14260, 14702, 14869, 14870, 14865, 14871, 14872, 14874, 14884, to 14889, 14892, 14893, 14952, 15891, 16996, 17015, 17016, 18103, 19023, 19049, 19987,20548, 20677, 20704, 20817, 21108, 21153, 21586, 21674, of the year 2008 and 4865, 138, 2997, 3487, 6186, 8379, 13379, 13469 and 13848 of the year 2009, as in all these writ petitions advance consumption deposit (in short "the security amount"), demanded by respondent No. 1 to secure payment of electricity consumption bills is under challenge. For facility of dictating judgment, facts are being taken from Civil Writ Petition No. 12794 of 2008.

2. This writ petition has been filed with a prayer to quash notification dated July 26, 2005 (P-l) notifying Regulations known as Haryana Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & power to require security) Regulations, 2005 (in short ''the 2005 Regulations''). Further challenge is to the Sale Circular No. U-43/2006 dated July 7, 2006 (P-2) directing all the Chief Engineers and others to recover revised security amount from the existing and the new consumers. Petitioner has also laid challenge to the notice dated July 1, 2008, (P-3) issued by respondent No. 4 to the petitioner, asking it to deposit an amount of Rs. 3,22,878/- towards the security amount.

3. In this writ petition, it is stated by the petitioner that when electric connection was released in its favour, it had deposited the security amount. Thereafter, the petitioner never committed any default in payment of the electricity bills. It was further averred that the demand now raised is arbitrary , without any rational basis and that exorbitant amount has been claimed from the petitioner without any justification. It has further been stated that the security amount has been claimed on the basis of maximum amount of bill paid by a consumer, in the previous year, whereas due to shortage of electricity and other reasons during the relevant period thereafter, the petitioner consumed less electricity. By stating as above, a prayer has been made to quash the impugned notification, sale circular and the notice.

4. Upon notice, separate replies - one by respondents No. 1 to 4 and another by respondent No. 5-have been filed. Respondent No. 5 in its reply has stated that the 2005 Regulations were framed by it in terms of the powers given under Sub-section (2)(t)(v) of Section 181 read with Sections 43, 46 and 47 of the Electricity Act, 2003 (in short "the Act") and all other powers authorising the Commission in that behalf. After promulgation of the 2005 Regulations, as per provisions of Regulation 5.5.1, first review to claim security amount, from the existing consumers was to be carried out within a period of six months from the date of Notification of these Regulations, i.e. July 26, 2005, so that the licensee could adjust security amount as per the provisions of Section 47 of the Act. It was further stated that subsequent thereto, review to claim/refund of the security amount was to be effected after every three years and that on account of large number of consumers, it is not possible to effect review frequently. It will also not be helpful for the future planning in the department concerned because with frequent reviews, revenue is bound to fluctuate. On the same lines, respondents No. 1 to 4 in their written-statement have stated that the security amount is being claimed as per provisions of Section 47 of the Act and the 2005 Regulations. Amount claimed is not in excess and is reasonable. Prayer has been made to dismiss this writ petition.

5. In all the writ petitions, mentioned above, the 2005 Notification and the sale circular are under challenge. Taking note of the same, vide order dated August 21, 2009, it was observed that it is not necessary to file reply in each and every case and one complete case is sufficient to hear arguments regarding grievance of the petitioners raised in all these writ petitions. In view of this, all the writ petitions were put up for hearing on August 31, 2009, and thereafter on September 5, 2009.

6. On behalf of the petitioners, Shri I.K. Mehta, Senior Advocate, and Shri Mukul Aggarwal, Advocate, by making reference to the provisions of Section 47 of the Act, have vehemently contended that the security amount claimed by respondents No. 1 to 4 is in excess and unreasonable. Counsel for the petitioners argued that the petitioners have never committed any default in payment of the electricity bills. They had deposited the security amount, when, initially electricity

connection was released to them. Under these circumstances, respondents were not justified to claim further amount, which is very exorbitant. It was further stated that before raising claim for security amount, no notice was ever issued to the petitioners. As such the order directing the petitioners to deposit the enhanced security amount being violative of the principles of natural justice deserves to be set aside. It is also argued that on account of shortage in supply of electricity, the consumers/ petitioners may not use the electricity equal to the month, by taking note of which, the security amount was assessed by the respondents. It is contention of counsel for the petitioners that in view of variation/fluctuation of electric supply to the consumers, it is incumbent for the respondents to undertake frequent review of the orders, to claim the security amount and if in excess, the amount be refunded to the concerned consumer. Counsel argued that the Regulation 5.5.1 of the 2005 Regulations contravenes the provisions of Section 47 of the Act and as such is liable to be set aside. Counsel prayed that the writ petitions be allowed, impugned notification/orders be set aside by allowing the writ petitions.

7. Prayer of counsel for the petitioners has vehemently been opposed by Shri Narender Hooda, Advocate, who has put in appearance on behalf of respondents No. 1 to 4, and Shri Ashwani Talwar, Advocate, who has argued the matter on behalf of respondent No. 5. Both have submitted that the security amount was claimed as per provisions of Section 47 of the Act and the 2005 Regulations. The calculation has been made as per the procedure provided in the Regulations and further that in view of increase in the rate of electricity and supply cost, to secure interest of the respondents, the enhanced security amount was claimed. On the amount to be deposited by the consumer, the consumer will get interest as may be fixed under the Regulations. The interest amount will be adjusted against electricity bills of the consumer. He further argued that being a policy matter and to implement the 2005 Regulations, it was not necessary to issue individual notices to all the consumers to claim the security amount. He prays that the writ petition be dismissed. However, he very fairly stated that in those cases where after the first review, three years have elapsed, the consumer may move an application for review and the same shall be undertaken on completion of requisite period. He also stated that in case these writ petitions are dismissed and in those cases, where consumer had not committed any default in payment of the electricity bills, the consumers will be permitted to deposit the security amount/balance amount, if any, without any interest.

8. Shri Ashwani Talwar, Advocate, for respondent No. 5 has argued that the 2005 Regulations are in consonance with the provisions of Sub-section (2)(t) and (v) of Sections 181, 43, 46 and 47 of the Act . He prayed that the writ petition having no substance be dismissed. To say that security amount under the 2005 Regulations is reasonable and justified, he has placed reliance upon ratio of judgment of the Hon''ble Supreme Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, .

9. Before dealing with respective arguments, raised by counsel for the parties, it is necessary to look into provisions of the Act, under which the 2005 Regulations have been framed. Sub-section (2)(t) and (v) of Section 181 of the Act empowers respondent No. 5 to make regulations, to provide for reasonable security, payable to the distribution licensee under Sub-section (1) of Section 47 of the Act. The Commission is further authorised to frame regulations to specify methods and principles by which charges of electricity shall be fixed and the period to review the same. Respondent No. 5 can also frame Regulations to lay down the procedure for supply of electricity on request, as is envisaged u/s 43 of the Act. Respondent No. 5 has the power to lay down the parameters authorising the distribution licensee to charge from the consumer expediture to provide electricity. Section 47 of the Act empowers the distribution licensee to claim reasonable security, as may be determined by the Regulations framed by respondent No. 5, for payment of all monies which may become due towards expenses for supply of electricity and the electricity bills. Section 47 of the Act reads thus:

47. Power to require security.- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him:

(a) in respect of the electricity supplied to such person; or (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in Sub-section (1) or the security given by any person has become invalid or insufficient the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in Sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in Sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of Clause (a) of Sub-section (1) if the person requiring the supply is prepared to

take the supply through a pre-payment meter.

10. Reading of the provision, mentioned above, indicates that for supply of electricity, the distribution licensee has the power to ask for reasonable security amount. Further power is given to review the security amount, in case it becomes invalid or insufficient. The power is also available to the distribution licensee to disconnect the electricity supply in case of non-deposit of the security amount. Sub-section 4 of Section 47 of the Act mandates the licensee to pay interest equivalent to the Bank rate or more, as may be specified by respondent No. 5, on the security amount, deposited by a consumer. It is further mandated that on request of the consumer, the distribution licensee is bound to refund the security amount. In case supply to the consumer is through a pre-paid meter, the security amount cannot be demanded.

11. At the time of arguments, counsel for the petitioners has not disputed power of respondents No. 1 to 4 to claim the security amount. Their primary grievance is that the amount claimed is not reasonable and excess and in view of that, the provisions of Regulation 5.5.1 of the 2005 Regulations need to be set aside being ultra vires to the provisions of Section 47 of the Act. To test argument, raised by counsel for the petitioners, it is necessary to note down provisions of Regulation 5.5.1 of the 2005 Regulations:

5.5.1. Subject to the restrictions of the periods of four months or two months as specified in regulation 5.3.1 and 5.3.2, the adequacy of the amount of consumption security in respect of consumers shall be reviewed by the Licensee once in three years based on the average consumption for the period representing 12 (twelve) months from April to March of the previous year:

Provided that the initial review of existing consumers shall be carried out within a period of six months from the date of issue of these regulations and the licensee shall adjust the Advance Consumption Deposit (ACD) of existing consumers against the consumption security required from them. Any deficit in the security on account of this revision shall be recovered in six instalments through the energy bills.

12. A reading of the provision, reproduced above, does not suggest that it contravenes the provisions of Section 47 of the Act. This provision only envisages that the licensee has the power to ask any person who wants electric supply, to give security for payment of all monies, which may become due to the licensee, in respect of electric supply or to be supplied to the consumer and expenses towards any electric line, plant / meter etc. to be provided for supplying electricity to a consumer. This power is perfectly within the parameters of Section 47 of the Act.

13. At the time of arguments, counsel for the petitioners, Shri Mehta and Shri Aggarwal, have tried to lay challenge to the provisions of Regulation 5.3 of the 2005 Regulations by stating that the procedure to fix the security amount is arbitrary. The said provisions read thus:

5.3.1 The LT consumers shall at all times maintain with the Licensee an amount equivalent to consumption charges of four months wherever bi-monthly billing is in vogue and two months in the case of monthly billing cycle, as consumption security towards the electricity supplied/ to be supplied to him against any default in payment during the period the Agreement for supply of energy is in force:

Provided that as and when the bi-monthly cycle is replaced with monthly billing cycle, the Licensee shall refund the excess amount, if any, over the two months charges by adjustment against the existing dues or those becoming due immediately thereafter.

5.3.2 The HT consumers shall at all times maintain with the Licensee an amount equivalent to consumption charges of two months as consumption security towards the electricity supplied/ to be supplied, against any default in payment during the period the Agreement for supply of electricity is in force.

14. A reading of this provision shows that the Low Tension Consumer shall, at all times, maintain with the licensee the security amount equal to consumption charges for four months, in case where bi-monthly billing system is in vogue and two months in case of monthly billing cycle. This amount is to be deposited, towards consumption of electricity to be supplied to the consumer and in case he commits any default in payment, the charges will be adjusted from the security amount. Similarly, High Tension Consumer is supposed to deposit security amount with the license; equivalent to consumption charges of two months. The said amount can also be adjusted in the manner, mentioned above. As per the provisions of Regulation 5.5 of the 2005 Regulations, subject to the restrictions of four months or two months as provided in Regulation 5.3 of the 2005 Regulations, the adequacy of the amount of consumption security, in respect of the consumers shall be reviewed by the licensee once in three years, based on the average consumption for the period representing 12 months from April to March of the previous year. It is further provided that the initial review regarding existing consumers shall be conducted within six months from the date of Notification of the 2005 Regulations and the previously deposited security amount, shall be adjusted towards security amount, to be deposited, under these Regulations. Procedure is also provided to claim security amount from seasonal industries. It is also provided that based on the review, as per the procedure provided in Regulation 5.5 of the 2005 Regulations, demand for additional amount and refund, if any, the licensee can raise for short fall or refund excess security amount. Regulation 5.7 provides that a consumer shall be entitled to get interest on the security amount, at the saving bank rate, notified by the State Bank of India or such higher rate as respondent No. 5 may fix from time to time. The interest amount so accrued will be credited to the consumer and it will be adjusted in the energy bills for the month of April or May every year or in the final bill, if a consumer opts for termination/disconnection.

15. This Court feels that a fool proof method has been provided to assess the

amount of security. Initially, the review was to be conducted within six months of the notification of the Regulations, which actually was done and the amount was demanded from the petitioners. Amount of security is to be determined by taking average of consumption of electricity, in 12 months preceding the review. This was to be repeated after every three years. It has rightly been stated that the amount equivalent to average consumption for four months, in case of bi-monthly billing circle and amount equal to two months, in case of monthly billing circle is perfectly justified. It has been stated that process to prepare an electricity bill will start after 30th/31st of a month, which will consume about five days and the office will take about ten days to prepare the bill. Then about 17 days are given to the consumer to deposit the same and in case of default, further reasonable time is given to the consumer to make the payment and only thereafter disconnection will be ordered. Before completion of this process, bill for the next month will become due. This Court feels that the argument raised is justified and is supported by ratio of the judgment of the Hon''ble Supreme Court in Ferro Alloys Corporation''s case (supra), in which by taking note of situation, like this one, as mentioned above, security amount equal to average consumption of three months, in monthly payment system was upheld.

16. The petitioners have failed to show as to how the payment towards security amount is arbitrary and violates any provision of Section 47 of the Act. In view of above, no relief can be given to the petitioners in these writ petitions.

17. In CWP No. 13010 of 2007, an additional point has been raised by Shri Aggarwal, counsel for the petitioner, he has stated that after getting notice, some money towards security amount was deposited and a request was made to the respondents to review their order because in the meantime, the petitioner, in that writ petition, had started generating his own electricity as per rules. However, his request was declined on the ground that review is possible only after three years. In this case, order to deposit the security amount was passed against the petitioner on October 31, 2006 (P-3). Shri Hooda, by making reference to the above said fact, states that let the petitioner make an application before October 31, 2009, and on completion of three years, his request for review will be entertained and order will be passed as per situation existing at the spot. If amount deposited by the petitioner is in excess, the same will be refunded to the petitioner and if to the contrary, there is a short fall, additional amount will be claimed.

18. Shri Hooda further stated that in all these writ petitions, if it is found that the amount deposited by the petitioners is deficient, they shall be permitted to deposit the balance amount without payment of any interest or penal consequences.

19. In view of above, petitioner in CWP No. 13017 of 2007 is directed to move an application for review regarding the security amount and on completion of three years, i.e., October 31, 2009, his request will be considered for review and appropriate orders will be passed as per provisions of the Act and the 2005

Regulations.

20. In view of facts, mentioned above, it is held that the petitioners in other writ petitions have failed to show that the amount claimed by respondents No. 1 to 4 towards advance consumption deposit is unreasonable.

21. As stated above, all the petitioners are permitted to pay balance security amount within a period of two months from today without any interest/ penal consequences, failing which, respondents No. 1 to 4 will be at liberty to recover the same in accordance with law. All these writ petitions stand disposed of, as mentioned above.

22. At the time of dictation of this judgment, it was felt that some similar cases like Civil Writ Petitions No. 4010 of 2007, 13509 of 2007 and other connected cases are still pending disposal in the Registry. The Registry is directed to list those writ petitions and the connected petitions, wherein challenge has been made to the Act and the 2005 Regulations, after getting appropriate orders from Hon''ble the Chief Justice.