

(1995) 02 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 14363 of 1988

Channabasappa

APPELLANT

Vs

Karnataka Electricity Board and Another

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49
Electricity Supply (Amendment) Regulations, 1981 — Regulation 35(D)

Citation : (1995) 2 KarLJ 1

Hon'ble Judges : S. Rajendra Babu, J

Judgement

1. The petitioner's father is a consumer of electricity. He obtained power connection to the IP Set from the respondents in the year 1970. It is stated that after the death of his father, the petitioner succeeded to his estate and he has been utilising the IP Set and is supplied with power to the IP Set uninterruptedly. It is claimed that the petitioner has not executed any agreement in favour of the respondents at any point of time. In the year 1985 power supply was cut off to the petitioner's IP set and on enquiry it appears the petitioner came to know that he was required to pay reconnection charges and also interest on the amount due by him, coming to a total sum of Rs. 7,427.40/- as on 30th June, 1988. It is stated that while the amount of electricity charges is in a sum of Rs. 3,627.41/- and the balance is by way of interest over the said principal amount calculated at the rate of Rs. 2% per month in accordance with Regulation 35(d) of the Electricity Supply (Amendment) Regulations 1981 (for short the Regulations). The petitioner therefore is challenging the validity of Regulation 35(d), which empowers the Electricity Board to collect interest for dues under any bill.

2. It is urged that the payment of interest is in the nature of compensation for the use or retention by one party of a sum of money or other property belonging to another. It is submitted that payment of interest at 24% would be arbitrary inasmuch as no Bank would give more than 10 or 11 per cent interest over any

investment made in any Bank and that is the most useful yardstick to measure as to what would be the reasonable compensation payable to the Board for the monies retained by the petitioner and in respect of security deposits given by the petitioner, the amount of interest paid by them is only to an extent of 10% and similarly when the deposits collected by the first respondent by public by way of investment, the maximum interest payable is at 10% and therefore it is submitted that levy of interest at 24% per annum is highly arbitrary, capricious and whimsical and therefore such levy ruins the public in general and the agriculturists in particular and therefore requires to be struck down as violative of Article 14 of the Constitution. The levy of interest is in addition to penalty payable and together with penalty the total liability would come to about 48% on the amount due and therefore the claim in that regard is exorbitant and unjust. It is stated that levy of such interest is not authorised under the provisions of the Indian Electricity Act, 1910 or Electricity (Supply) Act, 1948 or in any other law and therefore the impugned Regulation ultravires the provisions of the said enactments and is without authority of law and therefore liable to be struck down on that ground also.

3. I shall first take up for consideration the contention urged on behalf of the petitioner that the Electricity Board has no power or authority to levy any interest and such power is not traceable to any of the enactments governing the supply of electricity.

4. Section 49 of the Electricity (Supply) Act, 1948 provides for the sale of electricity by the Board and the Board is empowered to frame uniform tariffs and Section 49(2) provides the terms and conditions subject to which the Board can supply electricity and may for that purpose frame uniform tariffs.

5. The language of Section 49 is wide enough to cover a situation under of the present sort where interest could be levied. The object of levying interest is to ensure timely payment of the amount due to the Board and in order to see that the tariffs under the relevant provision as fixed have to be paid. It is certainly permissible for the Board to frame a Regulation in that regard. On this aspect, I am fortified with the decision in *Modi Industries Limited (Steels), Modinagar, Ghaziabad v Executive Engineer, Electricity Distribution Division, Modinagar, Ghaziabad and Another*, AIR 1991 Allahabad 351. Therefore, I find no substance in this contention.

6. So far as levy of interest at 24% per annum being very high and arbitrary, all that is necessary is to refer to a decision of the Supreme Court in *Khazan Chand etc., v State of Jammu and Kashmir and Others*, AIR 1984 SC 762. That decision was rendered in the context of a tax enactment. Even so, the principles stated therein would certainly be applicable to the case of this nature. It is stated therein that levy of interest at 2% though may be high, would not render the same to be arbitrary so as to be violative of Article 14 of the Constitution and it is made clear that in such cases it should be left to the Authority empowered to levy such fee or interest. As in the present case, in that case also the rate of

interest that would be given in respect of refund was also considered, which was far too low, which was merely half the interest that was payable on the tax. In the circumstances, the levy of interest at 2% per annum cannot be stated to be too high or arbitrary as to call for interference at the hands of this Court.

7. In *Sri Radhakrishna Khandasari Sugar Mills v Karnataka Electricity Board*, 1993(3) Kar. L.J. 382, this Court examined the scope of Regulation relating to levy of interest. In that case also the provision relating to levy of simple interest at 2% per month or part thereof was questioned. This Court upheld the said provision and it was explained that the object of levy of interest is to safeguard the interest of the financial position of the Electricity Board. In the circumstances, it cannot be said that such requirement is unreasonable or uncalled for as is sought to be contended.

8. The contention advanced on behalf of the petitioner that levy of interest at 24% in addition to levy of penalty at the same rate is exploitative and unreasonable is also devoid of merit. In this case there is no case of penalty at all. The situation and circumstances for payment of interest and penalty are altogether different. Interest is only to be calculated for delay in payments, whereas penalty would be levied in other circumstances. Therefore, the petitioner cannot rely upon the liability to pay the penalty to reduce the rate of interest payable.

9. I shall now take up the next contention advanced on behalf of the petitioner that the respondents cannot levy any charges for the period of disconnection, particularly where there is no agreement in subsistence between the consumer and the supplier. The petitioner relies upon the circumstances that agreement was with the father of the petitioner and not with him and therefore there is no agreement in subsistence so far as the petitioner is concerned and thus there is no liability to pay the minimum charge. It is no doubt true that there is no separate agreement between the petitioner and the Board in respect of supply of electricity. The supply of electricity had been made to the father of the petitioner. Admittedly, even though no fresh agreement was entered into electricity was supplied to the petitioner on the same terms and conditions. When petitioner has been supplied with electricity on the same terms and conditions as was prevalent earlier, it does not lie in the mouth of the petitioner to contend that those terms would not govern the petitioner. In addition to that the expression "consumer" would include any successor to the consumer also and therefore this contention that levy of charge for the period of disconnection is not correct. Further, this very aspect was considered by the Supreme Court in *General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others v Rajeshwar Singh and Others*, AIR 1990 SC 706, wherein the Supreme Court examined whether a contract would come to an end by mere disconnection of electricity or not. It was noted therein that mere disconnection of electricity would not amount to termination of the contract and even on that basis the petitioner cannot contend that on disconnection of supply of electricity that there was no agreement in force. That

even in such cases the Board was liable to supply electricity on fulfillment of the conditions for restoration of power. Therefore, the contract still subsisted. In that view of the matter, I find no substance in this contention.

10. Thus, the petitioner fails on all contentions.

11. Petition therefore is dismissed. Rule discharged.