

(2014) 09 MAD CK 0258

In the Madras High Court

Case No : Writ Petition Nos. 16590 of 2013, 13196, 13197, 13199, 13369, 13370, 13410, 13630, 13631, 13632, 13671, 13778, 13779, 13888, 13791, 13792, 13793, 13794, 13795, 13796, 13920, 13921 and 13922 of 2014

Dhevinthira Spinners (P) Ltd.

APPELLANT

Vs

The Chairman
Surana Industries Limited Vs The Tamil Nadu Electricity

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Electricity Act, 2003 — Section 111, 181, 181(1)(2)(v), 181(w), 24

Citation : (2014) 5 LW 305

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—The petitioners, who are consumers of High Tension Electricity Energy with the respondents board, have come forward with these batch of writ petitions aggrieved by the additional current consumption deposit demanded by the respondents/electricity Board. As the issue involved in all these writ petitions are common besides identical arguments have been advanced by counsel for both sides, these writ petitions are taken up together and are disposed of by this common order.

2. For the sake of convenience, the pleadings raised in W.P. No. 13369 of 2014 shall be considered and it will govern the entire batch of cases.

3. Brief averments of the Petitioners:-

(i) The Tamil Nadu Generation and Distribution Corporation Limited (in short TANGEDCO) Regulation provides for collection of security deposit and to review the adequacy of the same during the commencement of each financial year by the month of April. There are two types of consumers available in the State. One type of consumers solely depends upon the TANGEDCO for their full consumption

of energy and they do not have any other captive energy for their own for consumption. In order to regulate the adequacy of security held by such consumers, the Tamil Nadu Electricity Supply Code (in short Code) 5(5)(ii)(a) provides for collection of security deposit for monthly billing consumers and such deposit shall be equivalent to two times of monthly average of the electricity charges preceding 12 months prior to April of every financial year. In respect of the other type of consumers who consume power from TANGEDCO and also from their own captive source, either through their own windmills or otherwise, the review of adequacy of security deposit is being regulated by the orders passed by the State Regulatory Commission (in short Commission) from time to time. According to the petitioners, in the order No. 6 of 2012 dated 31.07.2012 issued by TNERC, it was decided by the Commission to collect security deposit charges corresponding to two times the maximum net energy supplied by the distribution licence in any month in the preceding financial year as the basis for payment of security deposit. According to the petitioners, the respondents/TANGEDCO has to review the adequacy of security deposit either by way of Regulation 5(5)(ii)(a) of the Code or by way of the Tariff order of the Commission.

(ii) The petitioner, in the pleadings contained in W.P. No. 13196 of 2014, being the test case, would quote an example stating that they are falling under the second category of partial captive consumer of wind energy and they have already made security deposit to the tune of Rs. 92,03,409/-. According to the petitioner, such deposit made by them needs to be reviewed as per the Tariff order of the Commission and not as per Regulation 5(5)(i) of the Code.

(iii) It is the grievance of the petitioners that when the third respondent attempted to review the adequacy of security deposit for the year 2014-2015, he reviewed the same in terms of the Tariff Order No. 6 dated 31.07.2012 of the Commission without correctly understanding the text of the operating provisions and eventually raised a demand of Rs. 49,05,951/- in the test case, over and above the existing deposit of Rs. 92,03,409/-, which according to the petitioners is legally unsustainable in law. According to the petitioners, the third respondent misconceived the Tariff order passed by the Commission, while calculating the requirement for additional security deposit and eventually issued the impugned demand notice.

(iv) It is the further case of the petitioners that as regards the captive consumers/third party users like the petitioners, the collection of security deposit needs to be regulated by the respective Wind Tariff orders of the Commission issued from time to time viz., it should be corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year. This would mean only the maximum of unit charges collected at the rate of Rs. 5.50 per unit with added/reduced charges on peak hour and night hour shall be calculated and the maximum of it in any month should be arrived and the two times of the said net energy charges needs to be collected as security deposit. Without doing so, the third respondent has taken

the highest gross consumption charges of the previous financial year viz., consumption for the month of February 2013 for Rs. 70,54,680/-, multiplied it by two for arriving the present demand, which is against the spirit of the Tariff Order issued by the commission.

(v) The petitioners have furnished a tabulated statement to show as to how the third respondent arrived at the demand, which is as follows:-

February 2013 month (highest)

Rs. 70,54,680.00

Two times of Rs. 70,54,680.00

Rs. 1,41,09,360.00

Existing deposit

Rs. 49,05,951.00

Additional deposit now demanded

Rs. 49,05,951.00

(vi) According to the petitioners, the maximum charge on net energy supplied by the third respondent for the month of February 2013 is indicated in Serial No. 6 of the consumption charges bill as Rs. 57,42,803/- and it should have been taken as the basis for the purpose of calculation. The other charges mentioned under Serial Nos. 7 to 17 are either incidental charges or miscellaneous charges and they all should have been excluded from the purview of reviewing the adequacy of security deposit. In this context, the petitioners relied on the order dated 04.05.2010 passed by the Commission in M.P. No. 7 of 2010 in which, the Commission, referring to Section 56 and 56 (1), found that any sum other than a charge for electricity referred to in Section 56(1) means charges other than tariff charges such as capacitor compensation charge, excess demand charge, belated payment surcharge, additional security deposit, name transfer charge, re-connection charge, meter related charges etc., mentioned in clause 4 of the Code notified by the Commission. Therefore, the petitions would contend that in fixing the charges, those miscellaneous or incidental charges cannot be included. It is further contended that even in the Code certain charges are deleted, while so, it is not open for the respondents to include those charges while arriving at the demand for additional security deposit.

(vii) The petitioners would further contend that Clause 4(2) of Miscellaneous Charges read with the order of the Commission dated 04.05.2010 made in M.P. No. 4 and 7 of 2010 would make the position abundantly clear that any other penalty in the nature of excess demand charges, low power factor disincentive and other such charges and arrears as listed in Clause 4(2) of the Code may not constitute to fall under the definition of "electricity charges" as they are only miscellaneous charge falling under Clause 4(2) of the Code. Therefore, according

to the petitioners, the procedure adopted by the third respondent for arriving at the additional security deposit amount is not correct. As per the amendment made in the Code with effect from 21.03.2012, the Commission introduced clause (d) in the Regulation 5(5)(iii) as per which security deposit in the above categories shall exclude incidental charges like operation and maintenance of lines/sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time. Therefore also, the petitioners would contend that the attempt on the part of the third respondent to include the other charges is not correct. It is specifically pointed out that the excess demand charges cannot be part of the electricity charges as defined in Clause 4(2) of the Code. In the impugned orders, the third respondent caused threat of disconnection of electricity supply in the event of failure to pay the demand by relying upon the amendment notified in the notification dated 30.06.2010 wherein it was stated that such additional security deposit has to be made within 30 days from the receipt of notice, however, if a request is made, the licensee will be permitted to pay such deposit in three installments commensurate with the billing cycle. In any view of the matter, such demand made by the third respondent is not in consonance with the Regulations of TANGEDCO, Code as well as the orders passed by the Commission and therefore, the impugned orders are liable to be set aside.

4. Brief averments of the respondents.

(i) The writ petitions were opposed by the respondents by filing a counter affidavit. According to the respondents, additional security deposit is being collected in accordance with the orders of the Commission and the Regulation which are in force. Notwithstanding the same, the respondents raised a preliminary objection as regards maintainability of these writ petitions before this Court. According to the respondents, if the petitioners are aggrieved by the impugned demand made by the third respondents, they could either prefer an appeal before the Appellate Authority in terms of Section 111 of the Electricity Act (in short Act) 2003. If the petitioners are aggrieved by the method with which the respondents have reviewed the adequacy of security deposit, they have to only exhaust the alternative remedy available before the Consumer Grievance Redressal Forum as well as the Tamil Nadu Electricity Ombudsman in terms of Section 42 of the Act. Therefore, according to the respondents, the writ petitions under Article 226 of The Constitution of India are not maintainable and the writ petitions have to be dismissed in limine. In this context, the respondents relied on the decision of the Honourable Supreme Court in the case of The Maharashtra State Electricity Distribution Co. Ltd. Vs. Lloyds Steel Industries Ltd., wherein it was held by the Honourable Supreme Court that when a competent Forum/Ombudsman have been created for redressal of grievance, the consumers can resort to those bodies by exhausting such alternative remedies.

(ii) Notwithstanding such preliminary objection, the respondents would contend that when the additional security deposit is being demanded, the respondents

takes into account that the petitioners are liable to pay not only consumption charges every month but also all the other incidental charges, which are being paid under the bill every month. Further, the demand charges are payable even without any electricity is consumed by the consumer i.e., the demand charges alone will have to be charged and no component of energy charges could be added as there was no consumption. To continue to get the electricity supply, the consumers must pay the energy capacity demand continuously. Further, the demand charge is determined using the maximum demand or peak demand occurring during the monthly billing period. The demand charge is billed as a fixed rate calculated on per KVA (kilovolt-ampere) basis. In this connection, the respondents made reference to Section 45(3)(a) of the Act to contend that the Act provides for collection of charges and it is inclusive of all other charges approved by the Commission from time to time. It is further stated that Section 47 empowers them to seek for additional security deposit. Reliance was also placed on Section 50(1) and (2)(v) and Section 181(w) of the Act which empowers the respondents to disconnect electricity supply for non-payment of the charges, including removal of meter. Further reference was made to Section 181(1)(2)(v) and (2) which deals with demand for reasonable security payable to the distribution licensee including payment of interest on security. The respondents would further contend that as per Section 50 and 181 of the Act, the Commission issued the Code wherein regulation 5(5) provides for reviewing the adequacy of security deposit by taking note of Regulation 34 and 35 of the Code. Therefore, it is contended on behalf of the respondents that the impugned notices in these writ petitions are in accordance with law, Regulations of the TANGEDCO, Orders passed by the Commission as well as the Code.

(iii) The respondents would further contend that the purpose of review is to avoid any loss due to default in payment of current consumption charges. In this regard, the respondents pointed out that the adequacy of security deposit is to be reviewed and re-fixed once in a year in case of High Tension consumers and the adequacy of security deposit is reviewable once in 12 months. According to the respondents, the consumers, in a year, are going to pay the bill for February 2014 upto 31.03.2014 and in the interregnum period, they will be using the service connection for the period upto 27.01.2014 to 27.02.2014 i.e., for the month of February 2014. Thereafter, for the consumption of energy from 27.02.2014 till 26.03.2013 i.e., for the month of March 2014, the charges becomes payable on 31.03.2014. Whereas, when two months amount is taken into consideration, deducting the highest payment, it would be beyond the amount as calculated by the petitioners and the current consumption charges alone has to be paid by them. Therefore, the respondents would contend that the additional security deposit demanded is perfectly justified.

(iv) In this connection, the respondents quoted an example in the counter by taking the last two years peak hour excess demand charges paid by the petitioner in W.P. No. 13196 of 2014. According to the respondents, the petitioner paid every month the excess charges and therefore, it cannot be called

as an incidental charges. The excess demand charges are in the nature of incidental charges and they are included as one among the components under the miscellaneous charges under Regulation 4(2) of the Code, therefore, it cannot be taken for calculation of adequacy of additional security deposit. When the petitioners were given 52 days time for payment of consumption charges, it not only mean consumption of electrical energy but also includes demand/fixed charges, fuel price and power purchase adjustment charges or any other charges approved by the commission. In short, the power to require security flows from Section 47 of the Act. The power to recover charges flows from Section 45 of the Act which includes charge for the actual electricity supplied in addition to the fixed charges fixed by the commission , rent or other charges in respect of the electric meter or electrical plant provided by the distribution licensee. The commission determines the tariff from time to time in exercise of powers conferred under Section 62(1) and 86(1)(a) of the Act. In respect of HT consumers like the petitioners, every month, the charges will be raised towards current consumption charges for the relevant month. Further, the power to require security from the consumers flows from Section 47 of the Act. Regulation 5(5) of the Code empowers the respondents to raise additional security deposit on review. Regulation 5(5)(ii)(d) of the Code provides that the security deposit shall exclude incidental charges like operation and maintenance of lines/sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time. Therefore, the respondents justified the demand made in the impugned orders and prayed for dismissal of the writ petitions.

5. I heard the respective counsel appearing for the petitioners as well as the respondents in these batch of cases and perused the materials placed on record.

6. The main point for consideration in this batch of cases is as to whether the respondents are empowered to seek for additional security deposit based on the higher consumption charges recorded in the preceding one year multiplied by two or the respondents have to only resort to demand actual consumption charges multiplied by two after excluding the other charges.

7. Before dealing with the rival contentions, it is necessary to extract the comprehensive tariff order on wind energy issued by the Commission in its order dated 31.07.2012, wherein in clause No. 8.12.2 it is stated as follows:-

"8.12.2 As regards the security deposit to be paid by captive/third party user, the Commission decides to retain the present arrangement i.e., charges corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit."

8. Relying on the above clause, the petitioners would contend that what the respondents can levy is two times maximum net energy supplied by the distribution licensee in any month preceding the financial year, which would

mean the net energy supplied and such net energy is the actual electricity supplied to those consumers in a particular month alone and no other charges should be levied or penalty imposed and they should not form part of the demand for additional security deposit. Further, the petitioners would add that the Commission decided to retain the present arrangement would mean and indicate that the amount can include actual consumption charges and not any other charges and that is why the word "maximum net energy supplied" was used. The petitioners would further contend that in the impugned order dated 17.04.2014, the third respondent summarily arrived at the amount as payable by the petitioners towards additional current consumption deposit over and above the existing current consumption deposit of Rs. 92,03,409/- in the test case, being W.P. No. 13196 of 2014. Further, in the impugned order, the third respondent straightaway directed the petitioner the amount in one lumpsum on or before May 2014 and failure to pay the same on the due date will result in disconnection of the power supply. As per the amendment issued by the respondents by a notification, the respondents should have given time to pay the amount in three installments. Further, even in the working sheet attached to the impugned order, they have taken the maximum energy consumed during February 2014 as the average and after multiplying it with two, the revised deposit was worked out to Rs. 1,41,09,360/- as against the original levy of Rs. 92,03,409/- and called upon the petitioners to pay the difference in deposit to the tune of Rs. 49,05,951/-. This according to the petitioners is legally not sustainable.

9. With this background, it has to be seen whether clause 5(5)(ii)(d) of the amended Code, amended with effect from 30.06.2010, is applicable to the petitioners or not. If Section 5 of the Code is not applicable, then what is the correct Regulation or Code which governs the dispute involved in these writ petitions has to be seen.

10. Section 47(a) of the Code empowers the respondents to call upon the distribution licensees to provide for security in respect of the electricity supplied. It also empowers the respondents, in case of failure to adhere to the demand, to refuse to give the supply or not to provide the line or plant or meter for the period during which period the failure continues. Similarly, Clause 5(iii)(2)(a) of the Code provides for adequacy of penalty on the billing of the respective category.

11. The main argument advanced on behalf of the petitioners is that the current consumption charges or net energy amount would only mean the actual charges levied every month on the actual consumption. But what is now included is all other charges which are to be excluded. The petitioner also would contend that Clause 8.12.2 in the order dated 31.07.2012 of the Commission would only denotes the net energy and other things have to be excluded.

12. In clause 8.12.2 of the order dated 31.07.2012, it was stated that the Commission decides to retain the present arrangement i.e., charges

corresponding to two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year shall be taken as the basis for the payment of security deposit. In Clause 5(5)(iii)(a) of the Code it was stated that for the category of consumer under monthly billing the security deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April. The above position would make it clear that the respondents are vested with the power to levy additional security deposit and it is also not disputed by the petitioners. The only dispute is whether inclusion of other charges for determining the additional current consumption charges is justifiable or not.

13. A simple example can be made to ascertain it easily. In the test case, in the annexure to the impugned order, a worksheet is given in which the highest consumption charges during February 2014, which works out to Rs. 70,54,680/- was taken as the monthly average and ultimately the sum of Rs. 49,05,951/- was determined as the differential deposit amount to be paid. The grievance of the petitioners is that it should be bifurcated in to two actual consumption charges along with the other charges. If such argument of the petitioners is accepted, for industrial consumption, if it is two monthly average excess to be taken, then the calculation could be only for Rs. 1,41,09,360/-. But at the same time, if the argument of the respondents is considered, every month the petitioners not only pay the actual consumption charges but other charges that are incidental thereto though it is variable. So, for instance, for the month of February 2014, the total amount was Rs. 70,54,680/- which the petitioner need to pay after availing extension of time upto 31.03.2014, which is permissible under Regulation 15(2) of the Code. This bill is for the period covering 27.01.2014 to 26.02.2014. As stated supra, the petitioners, at best, can pay the bill amount upto 31.03.2014. Whereas, in the interregnum period, they consume energy between 27.02.2014 to the next billing cycle of 26.03.2014, for the billing period of March 2014. Till such time, the petitioners can safely utilise the energy. Such payment will be again due and payable upto 30.04.2014. The petitioners consumed energy upto a certain period but did not pay the consumption charges immediately. In such event, the department will be on logger heads without able to collect the required amount and that is the reason why, they sought the entire amount to be calculated as per the billing cycle. This, the respondents contend, is not in repugnant to the order dated 31.07.2012 of the Commission.

14. In this connection, it has to be pointed out that normally, the consumption charges has to be paid within 7 days from the date of bill. Even in the case of non-payment within the due date, supply will not be disconnected automatically. Section 56 of the Act and Regulation 14 of the Code mandates 15 days clear notice to be given prior to disconnection for non-payment of the dues. Further, Regulation 15(2) of the Code allows the consumer to make an application for extension of time to make the payment beyond the expiry of notice period. Therefore, literally, the consumer can prolong the payment of the current consumption charges upto 60 to 64 days. Therefore, in the event of further

default and to ensure the current consumption charges for over two months, the adequacy of security deposit is demanded two times the maximum net energy supplied by the distribution licensee in any month in the preceding financial year as per clause 8.12.2 of Tariff Order No. 6 dated 31.07.2012 of the commission, but that does not mean regulatory commission did not take note of the other charges. If we now read clause 8.12.2, the word "net energy supplied by the distribution licensee in the preceding financial year" is used and if it is correspondingly read along with clause 5(5)(iii)(a) of the Code, it would clearly indicate that the security deposit will exclude only the incidental charges like operation and maintenance of lines/sub-stations of generators, charges for purchase of power from third parties, but shall be inclusive of all other charges specified by the Commission from time to time. At this stage, a distinction has been made by the learned senior counsel for the petitioners that the commission excludes it as per clause 8.12.2 inasmuch as only the net energy is taken and it does not include other charges. Whereas clause 5(5)(iii)(a) of the Code includes other charges as well. Now, this Court has to cumulatively read both. The power is vested on the respondents under the Code. In fact, miscellaneous charges also has been specifically pointed out in clause 4 of the Supply code. Clause 4 of the Code in its sub-clause 2 lists out the following charges and therefore, they all should be excluded for the review of adequacy of security deposit as they are only miscellaneous charges and not charges for supply of electricity, they are-

"2. Miscellaneous charges namely

- (i) Capacitor compensation charge;
- (ii) Excess demand charge;
- (iii) Excess contracted load charge
- (iv) belated payment surcharge
- (v) Additional security deposit, when so called upon;
- (vi) Service/Line shifting charge
- (vii) Name transfer charge
- (viii) Re-connection charge
- (ix) Consumer meter card replacement charge
- (x) dishonoured cheque service charge
- (xi) Meter related charge
- (xii) Application Registration Charge
- (xiii) Service connection charges
- (xiv) Excess demand and excess energy charges during Restriction and control of supply.

15. The learned Advocate General appearing for the respondents pointed out that Section 47 of the Act empowers payment of money, which may become due, which means any amount which become due. In fact, the learned Advocate General would point out that the tariff will be determined by the Regulatory commission from time to time under Section 62(1) and 86(1)(a) of the Act. Further, as per Section 47, in addition to tariff charges, the consumers are bound to pay tariff related charges for consumption of energy. The components under which the demand is made is clearly indicated in the bill. Further, the petitioners did not, in the writ petitions, raise any point regarding the minimum or maximum of security deposit amount.

16. The learned Advocate General appearing for the respondents, relying on the tabular column furnished in page No. 19 of the counter, indicating the evening peak hour excess demand charges as well as the normal hour excess demand charges, would contend that in all the 24 months period from April 2012 to March 2014, there was excess demand. Therefore also, if the contentions of the petitioners are accepted and the excess demand are not included among the various components in the bill, then the department will be put to irreparable loss and hardship. The learned Advocate General further pointed out Regulation 4(2) of the Code to contend that the respondents are justified in including those variable components in the bill. Therefore, the learned Advocate General appearing for the respondents would contend that consumption charges not only mean consumption of electrical energy but also other charges and it cannot be called as penalty, rather it is only an excess charge.

17. The learned Advocate General also brought to the notice of this Court that the petitioners herein have entered into an agreement with the department on various dates titled "Wind Energy Wheeling Agreement". The agreement is dated 21.09.2011 in respect of the test case. Among the clauses contained in the wheeling agreement, clause 9 categorically deals with payment of security deposit. Clause 9 states that the wind energy user shall pay security deposit equivalent to two times of the maximum net energy supplied by the Distribution Licensee in any month in the preceding financial year. In the said agreement, Clause 12 relates to settlement of dispute which specifically states that in the event of any differences or dispute, it shall be settled amicably by resorting to an arbitration before the Commission under Section 86(1)(f) of the Act. In Clause 8(7) of the agreement, it was stated that the wind energy user is permitted slot-wise banking to enable unit-to-unit adjustment for the respective slots towards rebate/extra charges. Further, as per Clause VII of the agreement, which deals with Billing, the distribution licensee will raise bill at the end of the month for the net energy supplied and excess consumption, if any, will be charged at the tariff applicable to the consumer. The agreement also provides for adjustment of energy generated and wheeled at Clause 5 which categorically indicates that.

18. The learned counsel appearing for the petitioners relied on the decision of the Division Bench of this Court rendered on 18.08.2007 in W.P. No. 15469 to 15474

of 2007 etc., batch wherein also the very same points raised, which were raised in these writ petitions, have been made. In that order, the Division Bench had an occasion to consider whether Section 49 of the Act is bad for want of guidelines and that demand for additional consumption charges is valid. The Division Bench of this Court, relied on the decision of the Honourable Supreme Court in the case of B.R. Oil Mills, Bharatpur vs. Assistant Engineer (D), R.S.E.B., Bharatpur wherein it was held as follows:-

13. It was observed

"100. In B.R. Oil Mills, Bharatpur v. Assistant Engineer (D) R.S.E.B., Bharatpur 3 it was observed: (AIR p. 109, headnotes) Where demand for deposit of cash security for one months estimated consumption charges and bank security equal to two months estimated charges as contemplated by Regulation 20 read with the Schedule thereto was made by the Electricity Board from a consumer of high tension electricity, the demand could not be said to be unreasonable and the consumer would not be entitled to continuation of the energy under Section 24 of the Electricity Act on his failure to deposit such security, even if no agreement had been entered into between the consumer and the Board after the commencement of high tension supply. Once the supply for electricity had commenced the consumer was bound by the terms and conditions of supply contained in the regulations. Further, in such a case, merely because the Board did not encash or could not encash a small portion of the security deposited in the form of National Saving Certificates before coming into force of the regulations, it could not be said that the demand of cash security in the form of Bank guarantee by the Board under the regulations was unreasonable. Furthermore, the demand of security from the consumer which was in accordance with the regulations framed by the Board could not be said to be unreasonable merely because no interest is paid on the cash security deposited by the consumer. In other words, the terms and conditions notified under Section 49 must relate to the object and purpose for which they are issued. Certainly, that power cannot be exercised for a collateral purpose. In this view, we hold Section 49 as valid.

Nature of Consumption Security Deposit

101. Each of the Electricity Boards before us is a State within the meaning of Article 12 of the Constitution of India. The Boards are different from licensees. (emphasis supplied) Each of the Boards has framed the terms and conditions of supply. One such condition relates to security deposits. Such a deposit varies from Board to Board. For example, under the terms and conditions notified by Andhra Pradesh Electricity Board under Condition 28.1.1 the consumer is required to deposit with the Board a sum in cash equivalent to estimated three months consumption charges. In the case of Rajasthan, the security is in the form of cash for one month and bank or insurance guarantee for two months.

102. The legislative sanction behind the power of the Board to direct a consumer

to furnish security may be examined. It has already been seen that the Supply Act is complementary to the Electricity Act, 1910. Section 26 of the Supply Act states that the Board shall have all the powers and obligations of a licensee under the Electricity Act. And this shall be deemed to be a licence of the Board for the purpose of the Act. Under the regulations framed by the Board in exercise of powers of Section 49 read with Section 79(j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If, therefore, the regulations prescribed a security deposit that will have to be complied with. It also requires to be noticed under Clause VI of the Schedule to the Electricity Act that the requisition for supply of energy by the Board is to be made under proviso (a) after a written contract is duly executed with sufficient security. This, together with the regulations stated above, could be enough to clothe it with legal sanction. In cases where regulations have not been made Rule 27 of the Rules made under the Electricity Act enables the adoption of model form of draft conditions of supply. Annexure VI in Clause 14 states that the licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed in his premises. Thus, the Board has the power to make regulations to demand security from the consumers.

103. The next question will be: what is the object in demanding security? The deposit though called security deposit is really an adjustable advance payment of consumption charges. The payment is in terms of the agreement interpreting the conditions of supply. This security deposit is revisable from time to time on the basis of average consumption charges depending upon the actual consumption over a period. This is the position under the terms of supply of energy with reference to all the Boards.

104. As a matter of fact, electricity is supplied in anticipation of payment. In almost every case it takes nearly 2 1/2 months for the recovery of the amount before action for disconnection could be taken. We will give one illustration as is in the case of Rajasthan. The following is the billing cycle:

(a) Consumption period - 30 days (b) Period consumed after taking the meter readings to issue bills - 10 days (c) Period allowed for payment - 17 days (d) Notice for disconnecting supply if consumer fails to deposit energy bill in time - 7 days (e) Period taken in actual disconnection after expiry of notice - 10 days
Total: 74 days

105. In practice, some time is also taken between the period allowed for payment and the notice of disconnection. At the same time, there is no obligation that the consumer must use only a particular quantum of electricity. He could even consume more than the average consumption. The Board after 2 1/2 months recovers amount for the electricity supplied by it. It could charge late surcharge in case of high tension tariff after the expiry of the said period.

106. Thus, it will be clear that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like a running current account.

107. The cycle of billing by the Board demonstrates that in the very nature of things, the consumer is supplied energy on credit. The compulsory deposit in the context of billing cycle is hardly adequate to secure payments to the Board by the time the formal bill by the Board is raised on the consumer. In one sense, the consumption security deposit represents only a part of the money which is payable to the Board on the bill being raised against the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability."

19. Apart from the above contentions unanimously putforth by all the counsels appearing for the petitioners, namely, Mr. Palani Selvaraj, Mr. R.S. Pandiyaraj, Mr. Kamalanathan, Mr. N.L. Rajah, Mr. R.S. Pandiyaraj appearing for several writ petitioners has vehemently contended that as per the provisions contained, security deposit at double the rate of monthly average consumption during the preceding 12 months is only contemplated to be taken and, therefore, in respect of consumers who had after taking connection had consumed electricity for a period of less than 12 months, no such additional security deposit need be taken as such security deposit should be taken only on the basis of monthly average during preceding 12 months.

20. In our considered opinion, such a contention misses the entire point relating to the reason for which additional security is insisted upon. Such additional security has been insisted upon as clarified by the Supreme Court, for the purpose of ensuring payment of charges, it is no doubt true that the Board has the power and discretion and nay, even duty to disconnect the electricity supply if there is failure to pay the amount in time, but before disconnection or even after disconnection the Board is also required to ensure that the amount payable to the Board is paid and for the aforesaid purpose only the security deposit is insisted upon. The amount of security is only twice the amount of the monthly average consumption and for the purpose of finding out such average consumption, last preceding 12 months has been taken into account, but it does not mean that before completion of such 12 months period no additional security can be insisted upon. If such a literal meaning is given, the entire purpose for insisting upon furnishing of security would be frustrated. Therefore, such literal interpretation is to be avoided. At any rate, even otherwise, this contention is of no live interest in the sense that all those petitioners, who had raised such question, had not made the security deposit because of various stay orders passed and by now the monthly average consumption during 12 months

preceding April is available, which can form the basis for deposit of additional security as contemplated in such Regulation.

21. In para No. 24 of the judgment, the Division Bench observed that in so far as the wind mills is concerned, the learned Additional Advocate General appearing for the Electricity Board has conceded that the decision rendered by the Electricity Regulatory Commission in 2006 is accepted and therefore the writ petitions can be allowed in terms of the order passed by the State Electricity Regulatory Commission. Subsequently, the Regulatory Commission passed an order in the year 2012 i.e., Comprehensive Tariff Order on Wind Energy in its Order No. 6 of 2012 dated 31.07.2012 in which the other charges were ordered to be included in the additional security deposit by the Commission. In fact, some of the consumers challenged the order of the Commission and they were directed to pay the average taken in the previous year. That was also challenged and this Court held that such an order of the Commission was not in consonance with the Regulations at that point of time and directed them to make a fresh representation which shall be considered by the respondents. Now, the Supply Code was amended by inserting Clause 5(5)(ii)(d) to include all the components to demand additional security deposit.

22. The object of collecting additional security deposit is only to ensure that the electricity department is not put to any peril in the event of delay or default in payment of the consumption charges. In fact, if the petitioners are aggrieved by such demand for payment of additional security deposit, they should have approached the Consumer forum or the appellate authority but that was not done. In the agreement entered into between the third respondent and the petitioners/consumers, a clause for arbitration is provided but that was not invoked, rather, the petitioners have chosen to invoke the jurisdiction of this Court under Article 226 of The Constitution of India and filed the present batch of writ petitions.

23. In the decision of the Honourable Supreme Court in B.R. Oil Mills's case referred to above it was held that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is further held that it is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit before actual disconnection. The said judgment squarely applies to the facts of the present case on hand. Therefore, following the said decision of the Honourable Supreme Court, I am of the view that the demand made by the third respondent in the impugned orders are in consonance with the Regulation as well the Code and I do not find any reason to interfere with the same.

24. In view of the fact that the writ petitions are held to be not maintainable and interim orders were passed by this Court in the above batch of writ petitions, the petitioners are directed to comply with the demand made in the impugned orders

passed by the third respondent to deposit the amount within a period of four weeks from the date of receipt of a copy of this order. Till such time, the respondents are directed not to disconnect the electricity service connection to the petitioners firm.

25. Subject to the aforesaid observation, all the writ petitions are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.