
(1993) 04 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeals No"s. 2117 to 2122 of 1993 (arising out of S.L.P. (C) No"s. 15014-19 of 1989) with S.L.P. (C) No"s. 7475, 9661-65 of 1990 and W.P. (C) No. 6770 of 1990 and C.A. No"s. 4714, 4928-43 of 1991 and 2409, 4512 of 1992, etc. etc.

Ferro Alloys Corpn. Ltd.

APPELLANT

Vs

A.P. State Electricity Board and another

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Electricity Act, 1910 — Section 2(4), 24, 57(2)
Electricity Rules, 1956 — Rule 27
Interest Act, 1978 — Section 4(2)
Orissa State Electricity Boar

Citation : AIR 1993 SC 2005 : (1993) 3 JT 82 : (1993) 2 SCALE 593 : (1993) 4 SCC 136 Supp : (1993) 3 SCR 199

Hon'ble Judges : S. Mohan, J;K. Jayachandra Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Mohan, J.—Leave granted.

2. These civil appeals are directed against the judgment of the Division Bench of Andhra Pradesh High Court reported in Southern Steel Ltd. v. A.P. State Electricity Board, Hyderabad MR 1990 AP 58. The facts briefly are as under:

3. The Andhra Pradesh State Electricity Board is constituted u/s 5 of the Electricity Supply Act, 1948 (hereinafter referred to as the Act). The said Board is engaged in generation, distribution and supply of electricity in the State of Andhra Pradesh. Electric energy is supplied for industrial, commercial, agricultural and domestic purposes. To such of these industries, using energy about a particular level, it is supplied at a higher voltage. They are classified as high tension consumers (H.T. consumers). All the appellants herein belong to that category.

4. Section 49 of the Act empowers the Board to notify the terms and conditions upon which it will supply electricity to a person. It is also empowered to frame uniform tariffs in that behalf. Sub-Section 2 specifies in fixing the uniform tariff, the Board shall have regard to all or any of the following factors, namely-

- a) the nature of the supply and the purposes for which it is required;
- b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;
- c) the simplification and standardisation of methods and rates of charges for such supplies;
- d) the extension and cheapening of supplies of electricity to sparsely developed areas.

5. Sub-Section 3 empowers the Board to enter into a special agreement with any consumer and prescribe different tariffs for him. u/s 4, an obligation is cast on the Board not to show undue preference to any person while fixing the tariff and terms and conditions for the supply of electricity. In all these cases, the appellants are covered by the general terms and conditions notified u/s 49(1) of the Act. The terms and conditions were notified by the Board and the B.P.M.S.No. 690 dated 17th of September, 1975. It is not necessary to refer in detail to the various terms and conditions. However, what requires to be noticed is the terms and conditions oblige every consumer executing an agreement in the prescribed form, undertaking to abide by the terms and conditions prevailing on the date of agreement and also agreed to be bound by the terms and conditions as may be notified from time to time. It is important to note u/s 25, the Board has unilateral right to vary the term from time to time under Clause 25.1. The terms and conditions for supply of electricity by special or general proceedings.

6. Condition 32.1 provides "the Board shall as far as possible within 15 days after the expiration of each calendar month cause to be delivered to every consumer a bill of charges stating the amounts payable by the consumer towards charges for energy supplied and any other sum in connection with supply of energy by the Board."

7. Conditions 32.2.1. obliges the consumers to pay the amount shown in the bill within 15 days of the date of the bill, in default whereof they are liable to pay "an additional charge of 2% per month or part thereof for the period of delay" in paying the bill. Condition 32.3. empowers the Board to disconnect the supply in case of default in paying the bill, without prejudice to its right to recover the amount due. Condition 24.3 also lays down that the consumer shall pay to the Board every month (he charges for electrical energy supplied to him during the preceding month at the tariff in force from time to time. Condition 28 obliges the consumers to deposit an amount equivalent to three months consumption

charges with the Board. It would be appropriate to set out condition No. 28 as far as it is necessary for our purpose, omitting what is not relevant as under:

28. Consumption deposits:- 28.1 Initial Consumption deposit. 28.1.1. The consumer shall deposit with the Board a sum in cash equivalent to estimated three month's consumption charges. The consumer coming under the L.T. category 'domestic' shall however pay at Rs. 30 00 per Kilowatt or part thereof connected load.

*"Provided that the Board may, in (he case of industrial consumers, accept by way of consumption deposit a sum equivalent to two months consumption charges during a period of three years from the date of first release of supply of electricity" 28.1.2. In the event of the consumer failing to pay to the Board any sum that may become due for payment to the Board on the dates fixed for payment thereof, the Board may, in addition to and without prejudice to the other rights of the Board, appropriate a part or whole of such deposit towards the sum due from the consumer. 28.2 Additional Consumption Deposit - All consumers other than those L.T. Domestic consumers whose monthly bills are less than Rs 500 for a continuous period of six months, shall keep with the Board an amount equivalent to charges for three months demand and energy charges as consumption deposit. The adequacy of the consumption-deposit shall be reviewed by the Board usually once in every year and/or at any time during the year if so warranted due to upward revision of tariffs, enhancement of the contracted demand by the consumer charges in the pattern of consumption by the consumer relaxation of power restrictions or such other factors which in the opinion of the Board, warrant review of the adequacy of the existing consumption deposit. The review shall take into account the following factors:

(i) In the case of consumers where there is no change in (he contracted demand, the average consumption for the proceeding twelve months after taking into consideration the quantum and nature of restrictions imposed, if any, during that period shall be the basis.

(ii) In the case of consumers who were sanctioned additional demand and availed it during a part of the period, average recorded consumption for the period of review shall be from (he date of utilisation of increased demand to the date of review after taking into consideration the nature and quantum of restrictions imposed, if any during that period.

(iii) The demand shall be contracted demand of the consumer at the time of review

(iv) The rates, at which the demand or energy charges shall be calculated, will be tariff rates prevailing as on the date of review. Based on such review, if the consumption deposit of the consumer is found inadequate or has fallen short on account of adjustments made as indicated in Clause 28.1.2 hereof, the consumer shall deposit within 30 days of receipt of notice in this regard such additional amount as may be required by the Board or replenish the required amount as

the case may be.

28.3 Interest on consumption deposit:- Interest shall be paid by the Board on deposit of more than Rs. 60/- made in cash at the rate of 3% per annum or such other rate as may be fixed by the Board from time to time. Full calendar months only shall be taken into account for the purpose of calculating interest and interest shall be calculated to nearest five paise. The interest accruing to the credit of the consumer shall be adjusted every year in the month of April in the Electricity Supply bills.

28.4 Disconnection or non-payment of consumption deposit:- If the consumer does not make payment of amount of consumption deposit or additional consumption deposit or where the deposit is given in Government security or National Saving Certificate Bank guarantee etc., he fails to replace them by deposit in cash when so demanded by Board within the notice period of 30 days supply of consumer shall be liable for disconnection.

28.5 The Consumption Deposit so calculated as per the Clause 28.1 and/or 28.2 above shall not be less than three times the monthly minimum charges, applicable to the consumer under the category to which he belongs.

28.6 AH consumers shall pay the Consumption Deposit or additional consumer deposit within thirty days from the date of the demand notice. If there be any delay in payment, the consumer shall pay surcharge thereon equal to 1 1/2% per month or such other percentage to be fixed by the Board from time to time, of the demanded amount for each month of delay or part thereof. This will be without prejudice to the Board's right to disconnected supply of electricity.

8. Clause (1) of condition 28 is general in nature. It applies to all consumers. Clause (1.2) enables the Board to appropriate a part or whole of the said deposit towards any amount due to the Board and not paid within the prescribed period. Clause (2) applies to all consumers, except those L.T. Domestic consumers whose monthly bills are less than Rs. 500/- per month for a continuous period of six months. Such consumers are obliged to keep with the Board an amount equivalent to three months' demand and energy charges, as consumption deposit. The deposit is liable to be reviewed by the Board from time to time, having regard to the factors mentioned in the said clause. Clause (3) prescribes interest which the Board has to pay on such deposit. It is 3% per annum. Clause (4) empowers the Board to disconnect the supply if consumption deposit/additional consumption deposit is not replaced whenever called upon to do so. Clause (5) prescribes a certain 'floor' below which consumption deposit shall not go. Clause (6) says that the consumption deposit or additional deposit shall be paid within thirty days of the notice demanding such deposit. In default, not only interest is payable but the supply also is liable to be disconnected.

9. The attack before the High Court was that according to Condition No. 32.1, the bill is served within 15 days of the expiration of each calendar month. The amount covered by the bill is payable within 15 days of the date of the bill. The

period of 15 days for payment is calculated not from the date of service of the bill but from the date of the bill. A bill could be served even on the very first day of the succeeding month in which event it will become payable within 15 days of the date of the bill. In such a situation, it is not correct to say that a consumer goes on availing and enjoying energy for a period or three months without paying for it. Invariably it does not exceed six weeks or at any rate, two months. In the event of non-payment under Condition No. 32.3, supply of energy can be disconnected without seven days notice as contemplated u/s 24 of the Indian Electricity Act, 1910. Therefore:

(1) It was urged that the consumption deposit should in no event exceed two months average consumption charges.

(2) The second attack was the payment of 3% interest by the Board on such consumption deposit is no longer good law in view of the judgment of Supreme Court rendered in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, , since this Court had taken the view that the interest on such deposit should be paid at the same rate as is paid by the schedule bank on fixed deposit.

10. It was generally urged that the Electricity Board being a State within the meaning of Article 12, it has to act fairly. Any term or condition will have to answer the test of reasonableness. On the contrary, if it is arbitrary, it would be violative of Article 14.

11. The High Court after analysing the object behind Condition No. 28 relating to the consumption deposit held; The condition requiring the consumer to pay the charges within 15 days from the date of the bill and on such failure, a right is conferred on the Board to disconnect the supply. The condition merely refer to the power of the Board. Existence or power is distinct from exercise of power. The Board cannot blindly act upon condition 32.3 and disconnect the supply the moment 15 days time (from the date of the bill) expires. It has to take a realistic view of the situation. After all, these industries are engaged in production of goods essential to the community. A blind and mechanical adherence to condition 32.3 (instant disconnection) may indeed prove counter-productive in larger sense. It was also not possible for the Board to notice the non-payment immediately in view of the large number of consumers and the extensive nature of organisation. Besides, huge sums are required by the Electricity Board as rotating capital. It borrows large amounts from organisations like L.I.C. and Banks, on which it pays interest to them. Hence, it is well entitled to require the consumer to co-operate by paying their bills regularly, by furnishing security deposits and by conforming to the terms and conditions of supply. Under these circumstances, the requirement of three months deposit could not be said to be unreasonable and unjustified.

12. As regards, the payment or 3% interest, the High Court was of the view that the decision of this Court in Jagdamba Paper Industries (P) Ltd. (supra) could not

be read as a decision of the Supreme Court on the basis of which it could be declared that the earlier Bench decisions of the High Court were no longer binding. Accordingly, it dismissed the writ petitions.

13. Aggrieved by this decision, the present S.L.Ps. have come to be preferred.

14. Mr. R.N.Narasimhanmurthy, learned Counsel for the appellant after drawing our attention to Clause 28 and 32 would submit that if there is any laxity on the part of the Board preparing the bill that cannot be a ground to make a consumer to pay three months deposit.

The tariffs of 1974 provided for the payment of bills within 14 days from the date of the bill while the quantum of deposit is three months consumption charges. Originally, the time for payment was 30 days from the date of the bill. That has been reduced to 15 days which is a drastic change. The security deposit is a provision for continued default of the consumer. The quantum of such a deposit is reckoned on the, basis of the lapse of time between the consumption charges that become due after expiry of time required for reading of meter, billing, delivery of the bill to the consumer; grace time allowed and the reasonable time required for disconnecting the consumer's service connection. The reduction to 15 days has great relevance on the quantum of deposit as the deposit is intended to cover the defaulted amount by the time of disconnection. However, considering that the bills of power intensive industries are prepared within 3 days of meter reading and also considering the close monitoring that is feasible in verification of payments of bills of these Consumers and the small number of these consumers distributed among the several Circle Officers of the Board, any default is detectable within 20 days of the bill for appropriate action to be taken immediately. The purpose of consumption deposit is only to safeguard the actual consumption charges that become payable by the time panel action could be initiated. Even the judgment of the High Court indicates that a time lapse of 37 days from the date of the meter reading without considering the 7 days notice prescribed u/s 24 of the Indian Electricity Act. The balance time of 23 days to make up for 90 days is provided for the laxity in the Board administrative system which justifiably cannot be passed on to the consumer by way of consumption deposit.

15. In view of the high stakes involved in the case of power intensive consumers, the Board should evolve a suitable system of payments and must keep the security deposit to the minimum instead of three months,

16. It is further submitted that the security deposit could be in the form of bank guarantee. There is no justification to require cash deposit. As a matter of fact, as noted in *Haryana Ice Factory v. Municipal Corporation of Delhi* and *Anr.* AIR 1986 Delhi 78, the security in the form of Government Bond is permissible.

17. In *Jagdamba Paper Industries Case* (supra), paragraph 11 of the judgment deals with rate of interest. That is a case where 8% was increased to 10% by consent. If really, it is in the nature of a deposit, there is no justification as to

why bank rate should not be awarded. It is seen from The Chairman, Karnataka Electricity Board and Others Vs. Gadag Mining Co. and Others etc., , 10% interest had been awarded.

18. Mr. Anil B. Divan, learned Counsel for the appellant in S.L.P.(C) No. 2564/92 would submit as under:

19. Power intensive units like the appellant's form a distinct class of consumers. The Ferro Silicon plant of petitioner No. 1 is a power intensive one where the cost of electricity constitutes about 55% of the price of the Ferro silicon produced. Electricity, thus is the basic raw material for this industry. On an average, the appellant is consuming electricity worth Rs. 1.6 crores per month. If there was full supply of electricity (without there being a power cut), the monthly bill would be approximately Rs. 4 crores at a present tariff.

20. The power intensive plant of the appellant maintains a very high load factor of 0.9%, Ordinary, H.T.consumers work at a load factor of only 60% and the units consumed at only 50 per KVA demand, The HT-III tariff for power intensive consumers requires a minimum consumption of 403.3 units per KVA demand. This means more than 8 times that of H.T, consumers. The Electricity Board has always classified power intensive units as a separate category. At present, there is a special tariff called HT-III tariff with a list of power intensive industries specified in the tariff notification.

21. The appellant No. 1 had deposited Rs. 1.07 crores in cash towards the security deposit. A teak guarantee for Rs. 53.64 lacs had also been furnished. A further demand of Rs. 96.5 lacs prompted the filing of the writ petition in the High Court. As per the orders of this Court in SLP No. 12077/84 it was directed on 6.2.1987 that a sum of Rs. 1 crore be paid by the 3rd of every month and the balance within 7 days of the presentation of the bill. This order came to be modified that Rs. 1 crore was to be paid on the 30th of the month and the balance within one week to the receipt of the bill. The said arrangement has been working satisfactorily. There has not been any default in payment of electricity bills. Therefore, the entire dispute is a theoretical one as to what the quantum of the security deposit can, or ought to be. A deposit in cash of an amount equal to three months average monthly bills at full supply at the present tariff without any power cut will amount to Rs, 12 crores on the basis of tariff revised in October 1992. With ever increasing tariffs, the deposit demand will also keep increasing. Under these circumstances, the condition requiring three months security deposit is arbitrary and illegal for power intensive consumers. The paid up share capital of appellant No. 1 is Rs. 3.8 crores. The gross value of the plant and machinery of the power intensive unit is Rs. 7.94 crores. The total advances made by the consortium of bankers for working capital is Rs. 4.25 crores. The total net worth of all the divisions of appellant No. 1 that is Marine products, Sugar & Engineering, Machine Building and the power intensive Ferro Silicon Plant is Rs. 14.6 crores. The security already furnished namely Rs. 5.7 crores is crippling the Ferro Silicon Plant division. A demand of three months

cash deposit would be in the range of Rs. 12 crores. It is arbitrary and unjustifiable to require appellant No. 1 to deposit several times its share capital by way of security. If this demand is enforced strictly, the plant of the appellant will become sick and ultimately, will have to be wound up. In other States, the provision is not so harsh.

22. If the security deposit is 'consumption deposit' and it is for meeting the cost of supply in advance, then the Electricity Board cannot charge penal interest at 2% per month for non-payment of bills within the stipulated period. The deposit, first must be appropriated against the dues and the interest charged only if there is balance due. The stand of the Electricity Board is perverse and illegal. Equally, there can be no question of 'supply on credit' if deposit is adjusted against consumption all the time.

23. The consumer has for a right to negotiate. In the Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others, , this Court directed the Electricity Board to adopt a realistic policy. Here also condition No. 28 must be altered.

24. There is no power under the Electricity Supply Act to enable the Board to raise revenue or to cover its capital cost etc. except by way of adjusting tariffs as seen from u/s 59 of the Supply Act, 1948. Therefore, consumption deposit cannot be used for the purpose of revenue or raising revenue. In this case, the Electricity Board had not placed any material to give interest only at 3%.

25. Mr. K. Parasaran, learned Counsel appearing in S.L.P No. 13004/89 after referring to the passage occurring at page 66 of Haryana Ice Factory case (supra) submits that the security deposit cannot go to build up the capital or fixation or tariff. Under Sections 49 and 59 of the Supply Act, finance is required to be adjusted including the payment of interest. Demand of three months consumption deposit cannot be resorted to. In support of his submission, reliance is placed on M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, .

26. Mr. Kailash Vasudev, learned Counsel for appellant in SLP 13004/89 submits that u/s 49 of the Supply Act, it is enjoined upon the Board to adjust its tariffs by keeping the factors detailed in the said Supply Act. Therefore, the Board cannot have recourse methods not provided under the said Act. The demand for a deposit to ensure the due payment of the bills for electrical energy consumed amounts to framing an additional tariff. The Board cannot do indirectly what it cannot do directly.

27. The Board being 'a state monopoly' has to act reasonably and not arbitrarily. The terms and conditions of supply cannot be unfair and oppressive.

28. Mr. R. Venkataramani, learned Counsel in his written submissions in Writ Petition Nos. 1293/89 & 1353/89 and SLP (c) Nos. 4791-92/90 & 4793-94/90 would urge that Section 49 of the Supply Act is unconstitutional

since there are no guidelines for framing the terms and conditions of supply of electricity. The said Section does not specifically spell out fairness of action. Clause 28 of the terms and conditions of supply is a clear illustration of arbitrariness and subordinate legislation.

29. The words 'as the Board thinks fit' ought to be interpreted so as to be consistent with the fairness of State action. They are to be construed as "reasonably thinks fit" as held in *Roberts v. Hopwood* 1925 AC 578 and *Pyx Granite v. Minister of Housing and Local Government* 1985 (1) All ER 625.

30. Clause 28 of the terms and conditions of supply relating to fixation of 3% interest and additional charges are vitiated due to non-application of mind. Under Clause 28.6 of the terms and conditions, in the event of delay in payment of consumption deposit or additional consumption deposit within the stipulated period, the consumer is obliged to pay surcharge at 18%. The obligation to pay surcharge and the power of the Board to vary the percentage from time to time would constitute draconian provision:

31. Money, wherever it is held in deposit could only be used to earn some interest. Therefore, paying 3% interest on the consumer deposit is not at all justified. A public institution cannot be allowed to get excessive interest.

32. In meeting these arguments, the learned Additional Solicitor General submits that under Electricity Supply Act, the finances of the Board are controlled to the minutest detail.

33. Originally, prior to 1978, Section 59 required the Board as far as practicable and after taking credit for any subvention from the State Government not to carry on its operation on loss. For this purpose, it was empowered to adjust its charges accordingly from time to time. Section 59 was amended by Act 23 of 1978. After the amendment, the Board after taking credit for any subvention from the State Government was required to carry on its operations and to adjust its tariffs so as to ensure that the total revenues in any year after meeting of the expenses left such surplus as the State Government may specify from time to time. this Court has taken the view in *Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others*, that even if the Government had not prescribed surplus, the Electricity Board could generate surplus.

34. After the amendment by Act 16 of 1983 which came into force on 1.4.1985, the Board was to create a minimum surplus of 3% or such higher percentage as the State Government would specify in this behalf. It is in this background, the matter will have to be adjudged.

35. The reason why three months security deposit is demanded is, for two months, the consumer gets free electricity. For supply of such electricity, the Board has to borrow and make payment of interest. If there are no consumer deposits, the tariff shall have to be increased. That will effect all the consumers. Interest at 2% is charged in case of default only in order to ensure proper

payment. It is penal in character. In the judgment under appeal, the High Court held that the burden relating to interest can be reflected either in the tariff or could be set off by calling upon the consumer to make deposit. In fact, this Court has upheld the tariff revision effected by Andhra Pradesh Electricity Board as seen from M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, . It Cannot be contended that the three months consumption deposit is arbitrary. This argument ignores the following important factors:

- i) This is not a security deposit but a consumption deposit.
- ii) It is in the nature of an advance payment.
- iii) In the event of failure to pay, it could be proceeded against as seen from Clause 28.1.2.
- iv) Consumption deposit is variable as per Clause 28.2 (iv).

36. If therefore, the object of consumption deposit is to ensure proper payment with reference to electricity supply, there is nothing arbitrary or unjustifiable. The fact that some of the appellants pay large amounts by way of electricity charges will have nothing to do with the nature of deposit. Merely because it is a power based unit, it cannot be treated separately. Nor can the appellant make a virtue out of necessity. The terms of supply relating to consumer deposit must be uniform, therefore, it is not correct to contend that the power based unit must be treated separately.

37. As regard payment of interest at 3%, electricity supply is made on credit basis. Therefore, it is a matter of adjustment of Board finances. Strictly speaking, the consumer deposit is in the nature of fidelity guarantee to ensure proper payment by consumer. The consumer may not be entitled to interest at all. However, where the Board has so adjusted finances and pays 3% interest, the Board cannot be defaulted.

38. Jagdamba Paper Industries case (supra) cannot be said to be a decision as to the rate of interest payable by the Electricity Board. Upon reading paragraph 11 of the judgment, it will be clear that it proceeded on the consent of the counsel.

R A J A S T H A N

39. The writ petitioners applied to the appellant Board for the supply of high tension power for their factories. After the execution of the necessary agreement and furnishing of security deposit, power connections were given. Subsequently, the Board issued notice requiring the consumers to deposit the enhanced amount of cash security as well as the bank guarantee on the basis of maximum power consumption of three months.

40. With regard to security deposit, Part II of the General Conditions of Supply and Scale of Miscellaneous Charges in Note-II stated that no interest will be paid by the Board on the security deposit. Two contentions were raised in the writ petitions, i) Note II providing for no interest was bad in law, ii) the enhanced

security must be calculated not on three months maximum consumption but on the basis of minimum power consumption. These two contentions found favour with the learned Single Judge. The Rajasthan Electricity Board filed special appeals while the consumers filed cross appeals. The Division Bench held as under:

i) The Board has power to demand additional security but the average consumption of three months should be taken as the basis for calculating the amount of such security.

ii) The class relating to non-payment of interest was not reasonable. Interest must be allowed on the entire amount of cash security from the date of the writ petition. The appeals by the Board were dismissed while cross-appeals by the consumers were allowed. Aggrieved by this judgment, the present S.L.Ps. have come to be preferred by the Rajasthan Electricity Supply Board.

41. Mr. Soli J. Sorabjee, learned Counsel appearing for the appellant argued as follows:

42. There is no legal obligation to pay interest on a deposit made by the consumer with the Board in terms of Clause 20(a) & (c) of the General Conditions of Supply. Nor even interest is payable under common law or in equity. In this connection, the learned Counsel draws our attention to Haisbury's 4th Edition, volume 32 pages 54-55. There is no legal or equitable obligation to pay interest for detention of monies. In support of this argument, learned Counsel relies on Bengal Nagpur Railway Company Ltd. v. Ruttanji Ramji, (1937) L.R. 65 IndAp 66 and Union of India (UOI) Vs. A.L. Rallia Ram, .

43. There is no contract or agreement which provides for payment of interest. On the contrary, Clause 9(b) (ii) of the General Conditions expressly provides that no interest will be paid by the Board on security deposit. There is no statutory provision which casts an obligation on the Board to pay interest on the security deposit. The High Court erred in relying on the model form of draft conditions of supply because the said model form is applicable to only licensee as defined u/s 2(h) of Electricity Act. It is not applicable to a Board which is not a licensee. Further, it is not necessary on the part of the Board to adopt model form. Schedule VI of 1948 Act again cannot be pressed into service as the Board is not a licensee. Clause 2(b)(v) of Schedule VI merely specifies interest on security deposit as properly incurred item of expenditure for the purpose of determining the 'clear profit' of the licensee. The said clause does not and cannot by itself impose an obligation on the licensee to pay interest on security deposit. Should interest be paid, then it qualifies as an item of expenditure properly incurred.

44. The High Court also erred in relying on Section 4(2) of the Interest Act, 1978. Section 4(2) has no application where an account of contractual term or a statutory provision, payment of interest is not permitted. Section 4(2) of the Interest Act, 1978 merely enlarges the categories of cases mentioned u/s 4(1). The said Section cannot override other statutory provisions or a contract between

the parties. The non obstante clause u/s 4(2), is restricted only to the provisions of Interest Act, 1948. It is submitted that under the billing practice prevalent with the Rajasthan Electricity Board the consumer has free use of electricity during the period between consumption of electricity and expiry of period after notice. During this period which varies from 2 to 2 1/2 months, the consumer in effect enjoys a credit facility. Therefore, if security deposit is demanded for three months, it is neither unreasonable nor arbitrary. As a matter of fact, the security demanded by the appellant Board is in the form of cash for one month and bank or insurance guarantee for two months. Therefore, it is all the more reasonable. In support of this, reliance is placed on *Kistna Cement Works, Tadepalli Vs. The Secretary, APSEB, Vidyut Soudha, Hyderabad and Others*, , *B.R. Oil Mills, Bharatpur Vs. Assistant Engineer (D) R.S.E.B., Bharatpur and Another*, , *Municipal Corporation for Greater Bombay and Another Vs. Devidayal Metal Industries and Another*, , *Haryana Ice Factory v. Municipal Corporation of Delhi* AIR 1986 Del 78 and *Southern Steel Ltd. Hyderabad Vs. The Andhra Pradesh State Electricity Board, Somajiguda, Hyderabad*, .

45. On the question of the constitutionality of the provisions regarding non-payment of interest and whether it is violative of Article 14, it is submitted:

- i) Article 14 does not mandate mathematical exactitude or scientific precision;
- ii) The mode and period of security should be related to the billing practice prevailing in Rajasthan Electricity Board.
- iii) The consumer with open eyes has entered into the agreement and has solemnly undertaken to abide by the condition regarding non-payment of interest. He cannot resale from that condition. There is nothing inherently objectionable, nor is the condition illegal or void as opposed to public policy. Even assuming, the contract between the consumer and the Board is an adhesion contract it is not necessarily unconscionable. In this connection, reference is invited to Black's Law Dictionary, 6th Edition, page 40. "That passage has been cited with approval in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, . In such matters, relief is given to the party only if the contract is so unreasonable as to be unconscionable. In this connection reliance is placed on *Gillespie Brothers Ltd. v. Roy Bowles Ltd.* 1973 (1) A.E.R.193, *Farms worth on Contracts*, 2nd Edition, 319 & 320 para 4.27. The rate of interest on security deposit cannot be equated with the rate of interest payable on fixed deposit because the nature and character of a security deposit is basically different from a fixed deposit. This is clearly brought out by the *Companies (Acceptance of Deposits) Rules, 1975*. The said Rules expressly exempt security deposit in definition of Rule 2, Clause (v) & (vi). In *Jagdamba Paper Industries Case (supra)*, the rate of interest was based on a concession by the parties. The Court had no occasion to decide the rate of interest. That part of the judgment proceeds sub silentio.

46. The argument based on surcharge levied for delayed payment is a non

sequitur. If the provision for non-payment of interest is valid and not arbitrary, it does not become arbitrary and unconstitutional because surcharge is levied at 2% per month. In fact, surcharge has not been challenged. Surcharge is attracted only if the bill is not paid within the due date. The submissions based on Sections 57 & 59 of the Supply Act in relation to security deposit proceed on a misconception of the nature and character of payment as a security deposit. The object of security deposit is to secure prompt payment of electricity bills. They are not intended to finance the Board's transaction. Section 57 read with sixth Schedule is meant to ensure a reasonable return. The expression 'charges' in the Sixth Schedule clearly shows that security deposits are not included within the expression 'charges'. There is no mutual exclusivity between increase of tariffs and earning interest on security deposits.

47. It is also incorrect to contend that prompt payees of electricity bills are treated on par with the defaulters and thus unequals are treated alike. The real test is, whether in the general application of law there is any discrimination. In support of this submission, the learned Counsel placed his reliance on:

48. The Collector of Customs, Madras v. Nathella Sampathu Chetty v. Nathella Sampathu Chetty 1962 (3) SCR 786 , Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others, , B. Banerjee Vs. Smt. Anita Pan, and Fatehchand Himmatlal and Others Vs. State of Maharashtra, .

49. The last submission of the learned Counsel is that a statutory provision may be struck down as unconstitutional only if it is palpably arbitrary an irrationality is writ large. Merely because the Court considers a particular provision to be unwise or undesirable, it is never struck down. The learned Counsel fairly concedes that the enhanced security deposit could be calculated only on the average consumption of three months of the previous years.

50. Mr. Altaf Ahmed, learned Counsel supporting the arguments of Mr. Soli J.Sorabjee would urge:

51. In this case, the consumers are those who use H.T. and E.H.T. lines. Section 49(3) gives the clue that each Board can have its own scheme. Section 79 of the Supply Act speaks of the power to make regulation. Clause s (i) and (j) are relevant because they talk of principles governing the making of arrangements with licensees u/s 47 and other than licensees u/s 49.

52. The industrial consumers constitute the majority user of the electricity amounting to 49.51 per cent. The transmission losses for 1992-93 alone are 22 per cent. Besides, the board is also purchasing power from other corporations and Suites. Therefore, the demand for security deposit is fully justified and there is nothing arbitrary in not providing for interest. That is what is provided under Clause 21(a) of the agreement in relation to high tension supply. The consumption deposit cannot be equated to the deposit in a bank and interest could be demanded as of right.

53. Mr. Kapil Sibal, learned Counsel appearing for the Haryana Board which Board has now withdrawn payment of interest, has filed intervention application since the present day position of the Haryana Board is on a par with Rajasthan.

54. Mr. R.K. Mehta, learned Counsel for the intervener on behalf of the Orissa Electricity Board through his written submissions urges that it may be that the regulations in the case of Andhra Pradesh, Uttar Pradesh and Bihar provide for payment of interest at a certain rate on the security deposit. However, the Rajasthan and Orissa regulations provide that no interest shall be payable on the securities furnished by the Board. In the impugned judgment the Division Bench has not given any cogent or valid reason for striking down condition Rs. 20 of the General Conditions of the Rajasthan Electricity Board. The High Court had failed to appreciate the following factors while quashing the impugned clause of the regulations. Electricity is an item which cannot be sold and supplied immediately after generation. For the sale of electricity one has to take meter reading meant for the said purpose and, therefore, the Board sends the bill for particular duration. It is obvious that the reading of the meter could not be taken at every point of time but only for duration/ period. In the process 2-1/2 months elapse. The Board does not charge any interest at least for 2-1/2 months from its consumers. At the same time, the Board needs finance for production, supply and other charges necessary for supply of electricity. The Board is thus obliged to take loans from various financial institutions. The consumers who are utilising electricity for 2-1/2 months without making any payment will be unjustifiably enriched at the cost of general public in the absence of security deposit. Further, taking of advance money without interest for providing other services in the market is a general practice. Therefore, a similar provision in the general conditions for supply of the Board cannot be treated as arbitrary or unreasonable.

55. A consumer is not entitled to claim interest on his security deposit having regard to the following considerations.

1. The security deposit is furnished in consideration of the performance of the consumer's obligation for obtaining the service essential to the life and the well-being of community.
2. The electricity supply is made to that consumer on credit without requiring him to make instant payment.
3. The billing time taken by the Board is for the benefit and convenience of the consumer as he saves additional expenditure on account of instant or shorter billing time, possibly through electronic devices which will be included in the tariffs.
4. The public revenues are blocked in the generation, transmission and distribution of electricity for the performance of supply on which the Board pays interest in so far as they form part of the loans borrowed by the Board for performing the public services. On the return of the blocked moneys the Board gets no interest from the consumers.

5. The Board needs back its blocked money to carry out service with a reasonable recompense.

6. The Board is not essentially a commercial organisation to which the consumer furnishes the security to earn interest.

56. Having entered into a contract with open eyes it is not open to the consumer to say that interest should be paid. The basis of supply of electricity and the conditions on which it is supplied being statutory, the provisions under the conditions of supply that the Board shall not pay interest on the security deposit has statutory basis and accordingly cannot be struck down as arbitrary on the basis of a commercial transaction governing a bank deposit. Therefore, it is submitted that regulation 7 of the Orissa State Electricity Board General Conditions of Supply Regulations, 1981 providing that no interest would be payable on security deposit is just and reasonable and is not arbitrary or violative of Article 14 of the Constitution.

57. Mr. Shanti Bhushan, learned Counsel opposing the stand of Rajasthan Electricity Board submits that the only question in this SLP is whether Electricity Board is obliged to pay interest on the cash security deposits as the Board compels industrial consumers to secure against default in payment of electricity bills. In the first place, as laid down in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, this Court has indicated that the security amount should bear the same interest as admissible on fixed deposit of scheduled banks. The interest rate on 10 per cent was decided not really on the basis of admission but on a positive finding. Apart from this, this Court has in several other writ petitions ordered interest at 12 per cent.

58. It is submitted that the scheme of Indian Electricity Rules of 1956 and the scheme of the Electricity Supply Act also show that the interest on security deposit is supposed to be payable. The Board is not entitled to use the deposits to augment its finances. They are meant only to secure the default in payment of the bills. Section 59 of the Supply Act indicates that the only condition in which the Board could raise the revenue is by adjustment of its tariff. Section 49 of the Act clearly makes a distinction between the tariff and the Board under the terms and conditions of the supply.

59. It can be seen from the definitions of the Sixth Schedule to the Supply Act that the scheme was meant to be applicable to licensees. The place of the licensees has been taken over by the Board. That is why Clause 2(b)(v) of Schedule VI of the definition of "clear profit" states that the interest on security deposits was to be a part of the expenditure properly incurred by licensees. Then again, the manner in which the accounts are to be maintained by the licensees also shows that the licensees have to make a provision for payment of interest on security deposits.

60. The High Court is right in relying on Section 4 of the Interest Act.

61. The contract in the instant case is between a consumer, however, high he might be and a monopolistic public utility company. It is clearly an adhesion contract. this Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, has clearly held that an unreasonable term of an adhesion contract will not be enforced

62. Interest on security deposit is also admissible under equity or common law, Halsbury's 4th Edn. Vol.32, paragraph 106 at page 53 defines "interest" as the return or compensation for the use or retention by one person of a sum of money belonging to or owing to another.

63. The Board is clearly in the position of a trustee in respect of this money since the money is deposited by the consumers in trust with the Board to secure the Board against default in payment of interest. The deposit of security is like the usufructory mortgage which is provided for in Section 76 of the Transfer of Property Act Section 76 G & H provide that the mortgagee in a usufructory mortgage would have to keep account of the incomes received from the mortgagee in his use and would have to pay compensation for the benefit derived by the user of the mortgaged property. The position here is more or less similar.

64. It is not correct to state that security is an advance payment. If it is so, it would amount to Board taking three months advance payment from the consumers. In such a case, the Board cannot disconnect the electricity until the period of three months is over. But the rules of the Board enable it to disconnect even if the consumer fails to pay his bills on the due date. Then again, a penal interest is charged in case of default. If it is in the nature of an advance payment three is no scope for charging 2-1/2 per cent penal interest.

65. Lastly, it is submitted that even under English Law interest is payable on security for electricity as seen from Halsbury's Volume 16 paragraph 129:

129. Giving of security. Security required under the Schedule to be Electric Lighting (Clauses) Act 1899 to be given to an electricity board (See the Electric Lighting (Clauses) Act 1899, Schedule, Sections 25(2), 17(2), (3) and paras. 115, 118, ante.) may be deposit or otherwise, and of an amount agreed or, failing agreement, determined by a magistrates' court , and that court may deal with the costs of the proceedings, and its decision is final and binding on all parties. (Ibid., Schedule, Section 71; Electricity Act 1947, Section 57(2), Sch.4, Part III) Where security is given by way of deposit the party to whom it is given must pay interest at the rate of 4 per annum on every sop for each period of six months during which it remains so deposited. (Electric Lighting (Clauses) Act 1899, Schedule, Section 71 proviso; Decimal Currency Act 1969, Section 10(1).

UTTAR PRADESH STATE ELECTRICITY BOARD

66. The question raised before the High Court was as to the rate of interest The respondent (U.P. State Electricity Board) amended the rate of security deposit as

Rs. 2. per K.V.A. On such deposit it paid only 3 per cent interest whereas on late payment of the bills it charged more than 24 per cent surcharge from the consumer. The appellants preferred writ petitions in so far as they were denied 12 per cent interest on the deposit taken from the consumers. The Division Bench of the High Court held:

These petitions are dismissed with a direction that in case the Supreme Court decided that the interest at a rate higher than 3% should be paid on such security and additional security deposit, the benefit of the same judgment shall also be extended to the petitioners herein, without the necessity of any further proceedings being taken by the petitioners." Hence, the special leave petitions.

67. Mr. G. Ramaswami, learned Counsel for the appellants would urge that Jagdamba's case (*supra*) has decided the rate of interest. Therefore, that should govern.

68. In a number of matters this Court has also ordered interest at 12 per cent. The same principle should apply to this case as well.

1. Security Deposit is a compulsory levy. The consumer has no option.
2. Even in contractual matters if the Board, which is a State, does not behave fairly, this Court can always interfere.
3. The Board cannot compel the consumer to make a security deposit without corresponding obligation to pay interest.
4. Deposit does not contemplate appropriation.
5. Prior to appropriation, what is the character of the deposit, requires to be determined. It is not the payment of money by way of advance.

69. As to the meaning of interest it could be gathered from the case in *Riches v. Westminster Bank Limited* 1947 Appeal Cases 390 at 400. In *Union of India (UOI) Vs. A.L. Rallia Ram*, this Court held that interest is awardable in equity.

70. A distinction will have to be made between unreasonable and unconscionable. In Administrative Law mere unreasonableness is enough to set aside a contract while unconscionable relates to private law. If interest is not paid security deposit cannot be demanded as this will amount to unconscionable bargain. As to the meaning of unconscionability, Black's Law Dictionary (Fifth Edition) at page 1367 can be usefully referred to:

Basic test of "unconscionability" of contract is whether under circumstances existing at time of making of contract and in light of general commercial background and commercial needs of particular trade or case, clauses involved are so one-sided as to oppress or unfairly surprise party. *Division of Triple T Service, Inc. v. Mobil Oil Corp.* 60 Misc. 720, 304 N.Y.S. 191. Unconscionability is generally recognized to include an absence of meaningful choice on the part of one of the parties, to a contract together with contract terms which are

unreasonably favourable to the other party. *Gordon v. Crown Central Petroleum Corp.* D.C.Ga., 423 F. Supp. 58. Typically the cases in which unconscionability is found involve gross overall one-sidedness or gross one-sidedness of a term disclaiming a warranty, limiting damages, or granting procedural advantages. In these cases one-sidedness is often coupled with the fact that the imbalance is buried in small print and often couched in language unintelligible to even a person of moderate education. Often the seller deals with a particularly susceptible clientele. *Kugler v. Romain* 58 N.J. 522, 279 A. 640.

As to the meaning of reasonableness it is stated in *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, . Under English Law relating to electricity supply as seen from Halsbury's Vol. 16 at paragraph 129 it is clearly stated that interest on security deposit is payable. Therefore, all the more the reason why here also it must be held to be payable.

71. Mr.Kapil Sibal, opposing the stand of Mr. G. Ramaswami argues that there is no order of this Court adjudicating the rights of the Board on the consumer in respect of the validity of consumption security deposit being condition precedent for the supply of electricity by the Board as well as the liability of the Board to pay interest to the consumer in respect of the consumption security deposit. In the absence of any such adjudication the question of Board being bound by the previous orders of this Court, does not arise. In cases where 12 per cent interest was awarded it was only by way of ad interim measure. The other orders are also not conclusive on this aspect. Therefore, the matter will have to be decided afresh in the instant cases.

72. Far from being a compulsory levy, the consumption security deposit is not only a deposit in cash to safeguard recovery of electricity dues for the energy supplied to the consumer on credit but also a security towards payment or satisfaction of any money (for 'example, theft), which may become due and payable to the Board by the consumer.

73. The obligation to pay interest to the consumer proceed on the assumption that the Board in keeping the security deposit and depriving the consumer of the use of the money which is alleged to be earning interest with the Board. This assumption is not warranted for the following reasons:

1. The cycle of billing demonstrates that in the very nature of things the consumer is supplied energy on credit. The security deposit is hardly sufficient to secure the payment to the Board by the time the formal bill by the Board is raised on the consumer.

2. The consumption security deposit indeed represents only part of the money which is payable to the Board at the end of the billing cycle. The said amount can be appropriated at any time towards the payments that are due to the Board and reflected in the formal bill.

3. In the nature of billing cycle it is the Board which has to revive interest on the

energy supplied to the consumers on credit.

4. The concept of interest earned on a fixed deposit is alien to the issue. The liabilities of the consumer increase on a daily basis depending on the level of supply and consumption. Therefore, the amounts due are liable to be appropriated forthwith. That is not possible where moneys are placed either on fixed deposit or savings bank account.

74. It is incorrect to contend that the amount is lying in trust with the Board. The amount lying with the Board could also be appropriated for satisfaction of any amount liable to be paid by the consumer for violation of any conditions of supply in the context of wide scale theft of energy and tampering with meters. Therefore, the security deposit serves not only to secure the interest of the Board but also serves as a deterrent on the consumer in discharging his obligation towards the Board. u/s 49 the Board is enabled to supply electricity upon such terms and conditions as it thinks fit. Under Article 226 of the Constitution, the Court is to conduct a limited scrutiny whether by imposing such a condition the Board has not acted as a private trader and thereby shed off its public utility character. Should the Court come to the conclusion that the Board has not acted as a private trader and the nature of deposit has a rational relationship, the issue will fall outside the scope of judicial purview.

75. Section 49 must be read along with Section 59. The contention that the Board can achieve a surplus by adjusting its credit does not flow from the language of Section 59. The requirement of consumption security deposit is a condition of supply. It has a direct bearing on the operation of the Board. Hence it is 'per-se' reasonable and constitutional.

76. If there is a revision in the rate of tariff there has to be an upward revision of the consumption security deposit since it has a direct bearing on the level of supply in consumption of electricity. In October 1986, the tariffs in the State of Uttar Pradesh were adjusted upwards. The revision in the form of an additional security deposit with interest at the rate of 3 per cent was made in January 1987. These facts would suggest the rationale in the imposition of additional security deposit. This being a condition of supply no reasons need be given at the time of upward revision. Union of India (UOI) Vs. A.L. Rallia Ram, relates to the award of interest by an Arbitrator. The nature of consumption security deposit is such that it represents the moneys of the Board. There is no relationship of debtor and creditor. There is no deprivation of property which alone will entail the consequences like payment of interest.

77. The learned Counsel has also filed a tabulated statement to show that the security deposit made by the appellant is 72.42 lakh for all industries while the arrears in electricity come to 965.73 lakh. A formal chart has been filed based on the figures for August, September and October 1991 to show that after the third month the consumption charges total to 45.09 lakh while security that is offered is 15.95. The same is the position with reference to other industries as well

concerning whom the learned Counsel has filed a tabulated statement. This is to establish how the Electricity Board has supplied electricity on credit to the various consumers and the security deposit is hardly sufficient even for one month's consumption.

B I H A R

SLP 1179V of 1989

78. The appellant (Bihar Electricity Board) provided 4 per cent interest per annum on security deposit. When this was questioned in C.W.J.C. No. 3000 of 1987 in the matter of Dhanbad Flour Mills, a Division Bench of the High Court was of the view that an interest at 4 per cent appeared to be unreasonable and directed the Board to examine the question of enhancement of the rate of interest. Similar directions were issued in another, case. The appellant-Board after examining the matter issued a Notification on 27th of May, 1988 and enhanced the rate of simple interest to 5 per cent per annum. This was because the amount of security deposit was kept in the savings account which earned 5 per cent interest which was passed on the consumer. The said notification was questioned before the High Court by seeking a writ of mandamus claiming interest at the rate payable on fixed deposit by a nationalised bank in view of the decision by this Court in Jagdamba's case (supra). By the impugned judgment the High Court directed payment of interest on security deposit at the rate payable on fixed deposit by nationalised banks. Aggrieved by this judgment the Bihar State Electricity Board has preferred the special leave petition.

79. Mr. G.L. Sanghi, learned Counsel appearing for the Bihar Board draws our attention to Clause 15.3 of the tariff notification and submits that the consumption security deposit is not only for the supply of energy on credit but also for satisfaction of any money payable by him. If the consumer does not pay the dues in time the arrears of consumption charges will have to be adjusted against the security deposit. Therefore, the security deposit can never be kept in bank under fixed deposit. This is the reason why the amount is kept in savings bank account and whatever interest is earned thereon, that is passed on to the consumer. Therefore the High Court was not right in awarding a higher rate of interest. In other respect, the learned Counsel adopts the argument of the other learned Counsel appearing for the various Boards including the contention that Jagdamba's case (supra) did not lay down the rate of interest.

80. Normally, in market transaction when any one supplies on credit to a consumer a guarantee is taken for the payment on dues. Such a guarantee may be in the shape of a bank guarantee, fixed deposit. Similarly, the Board when it supplies electricity on credit it keeps the security for the amount of supply of electricity. According to Board's standing order No. 433 dated 31.12.74, dues at any time are not allowed to exceed amount of security deposit and adjustment is to be made against the security deposit after the disconnection of supply. Therefore, it is not correct to state that the security is not adjusted towards the

bill and is kept in tact.

Section 24 of the Electricity Act is the only provision to ensure payment as indicated in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, .

81. In meeting these arguments it is submitted by Mr. M.P.Jha, learned Counsel for the respondent that the stand of the Board in making payment of interest at 4/5 per cent is clearly arbitrary. The security aspect of the Board's requirement can easily be satisfied by the Board resorting to liquidation of security deposit. As a matter of fact, the security deposit was never adjusted by the appellant -board. As a result large amounts were kept without investing them in fixed deposit. learned Counsel for the respondent relies on the orders issued by this Court and submits that the question of interest is settled by the ruling in Jagdamba's case (supra). Section 24 is of no help for payment of a lower percentage of interest.

W.P.No. 578 of 1987

82. In this writ petition, under Article 32 of the Constitution, the challenge is to the increase of security deposit for L and H power consumers above 100 B.H.P. It has been increased from Rs. 170 to Rs. 200. No reason whatever has been assigned for such an increase of security deposit. That will be bad in law as laid down in Central Inland Water Transport Corporation Limited (supra). This is the argument of Mr. Gobind Mukhoty. This is countered saying that when there is an increase in tariff the security deposit also is liable to be increased.

PUNJAB

W.P. NO. 1317 of 1990

83. In this writ petition, the challenge is to the validity of Sections 49 and 79 of the Supply Act. According to the respondent (Punjab State Electricity Board), the writ petition is not maintainable. A challenge to the imposition of advance consumption of deposit does not involve any fundamental right.

84. The Punjab State Electricity Board is a licensee of the State of Punjab. The electrical energy is generated through hydro as well as thermal plants for ultimate sale to consumers. 50% of power is generated through hydro while the remaining through thermal plants which consume coal/oil. The coal companies and those major suppliers of power plants are demanding cost of coal in advance. On these advances no interest is payable to the Board. Therefore, while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers the consumers also use and consume electricity on credit ranging from 2 to 3 months depending upon the category of consumers. To off-set part of the amount that the consumer owes to the Board constantly and also to ensure timely payment of advances by the Board to its suppliers an advance consumption deposit is insisted upon before commencing supply to the consumer. If this is not so taken the Board will be left with no other option than to increase the tariff. This advance deposit cannot be termed as a fixed deposit

as the amount cannot be utilized against non-payment of dues from consumers. Besides, the consumers can also ask for the refund. Section 49(1) and 79(j) cannot be termed as arbitrary. In fact, this Court has upheld the validity of Section 49(1) in Jagdamba's case (*supra*).

85. Lastly, it is submitted that the Board is generating electricity and each unit so generated costs the Board rupee one per unit. The Board is selling at an average rate of 50 paise per unit to the consumer which includes the agricultural sector. Therefore, the amendment to Clause 23 of abridged conditions of supply requiring to pay advance consumption deposits is perfectly reasonable.

86. Mr. P.P.Rao, learned Counsel appearing as intervenor on behalf of Calcutta Electricity Supply Corporation supplements the submissions of Mr. Soli J. Sorabjee. The deposit though called security deposit is really an adjustable advance payment of consumption charges. The amount is revisable from time to time depending upon the average consumption charges on the basis of actual consumption over a period.

87. The true nature of transaction in these cases is one of advance for consumption of electricity estimated for a period of three months subject to adjustment/revision, if necessary. Such an advance is liable to be made good and kept at a stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, make good the shortfall in consumption charges and the security deposit before actual disconnection of supply which takes at least about three months. In short, it is in the nature of a running account. The security deposit does not remain in tact like a fixed deposit but gets depicted day after day depending on the extent of consumption. More often than not, the consumption charges and other dues exceed the security deposit. That necessitates calling for additional advance to make up a shortfall. In the absence of any usage or contract or any provision of law requiring payment of interest, interest is not payable for wrongful detention of money. In this case, there is no wrongful detention of even. Section 4(2) of the Interest Act has no application to this deposit. When electricity supply is duly made with a consequential liability to pay for each day's consumption, the so-called security deposit is not a deposit in the real sense for the consumers . to claim the benefit of Interest Act.

88. We will now proceed to consider the correctness of the above submissions with reference to the following aspects:

(i) Whether Section 49 is bad for want of guidelines.

(ii) The nature of consumption deposit, irrespective of the nomenclature by which it is called.

(iii) (a) The liability of the Electricity Board to pay interest.

(b) Whether the clause in the terms of supply providing for non-payment of interest is unconstitutional or arbitrary.

(iv) The demand for additional consumer deposit- Whether valid ?

VALIDITY OF SECTION 40

89. The law relating to electricity is principally contained in two Acts.

(i) The Indian Electricity Act of 1910 (hereinafter referred to as the "Electricity Act"). This provides for grant of licences in relation to supply of electricity and the projects of undertakings. It also provides for supply of electricity including the protective clauses.

(ii) The Electricity (supply) Act of 1948 (hereinafter referred to as the "Supply Act") provides for Constitution of State Electricity Boards, the powers and duties of such Boards. Certain important provisions of the Act may now be seen.

90. Section 2 is interpretation Section , u/s 2(2) the Board means a State Electricity Board constituted u/s 5. Section 2(10) states that regulation means regulations made by the Board u/s 79.

Section 5 deals with the Constitution and composition of State Electricity Board. Section 49 is the provision for sale of electricity by the Board to persons other than the licensees. Sub-section (1) of the said Section commences with the words "Subject to the provisions of this Act and of Regulations". This means if there are any provisions regulating the Board in the matter of supplying electricity to any person not being a licensee then the supply by the Board will be subject to all those provisions. It has been so laid down in The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, :

The expression " Subject to the provisions of this Act" merely that if there are any provisions regulating the Board in the matter of supplying electricity to any person not being a licensee, then the supply by the Board will be subject to those provisions. No provision has been brought to our notice which regulates the Board in the matter of the charges which it may fix for the supply of electricity.

91. this Court had occasion to deal with the scope of the said Section and Section 59. In M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, it has been observed thus:

Section 49 makes provision for the sale of electricity by the Board to persons other than licensees. Sub-section (1) starts with the words "Subject to the provisions of this Act and of regulation, if any, made in this behalf". This means that the provision made therein is subject to other provisions of the Supply Act and the regulations. It then proceeds to say that the Board may supply electricity to any person not being a licensee upon 'such terms and conditions as the Board thinks fit' and may for the purposes of such supply frame 'uniform tariffs'. Sub-section (2) then enumerates several factors which the Board is required to 'have regard to' in fixing the uniform tariffs. The meaning of the expression 'have regard to' is well settled. It means that the factors specifically enumerated shall be taken into account while performing the exercise which in this case is fixation

of the uniform tariffs. Ordinarily, therefore, uniform tariffs are required to be framed by the Board for making such supply. Sub-section (3) then proceeds to say that nothing in the earlier enacted provisions shall derogate from the power of the Board, "if it considers Unnecessary or expedient to fix different tariffs for the supply of electricity to any person", having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and 'any other relevant factors'. Sub-section (4) then says that in fixing the tariffs and terms and conditions for the supply of electricity, 'the Board shall not show undue preference to any person'. In other words, Sub-section (4) provides against any unreasonable discrimination in fixing the tariffs and terms and conditions for supply of electricity. The power of fixation of tariffs in the Board is provided in this manner by Section 49 of the Supply Act which requires the fixation of uniform tariffs ordinarily having regard particularly to the specified factors and enables fixation of such tariffs for any person having regard to the factors expressly stated and any other relevant factors, providing further that no unreasonable or undue preference shall be shown to any person by the Board in exercise of its powers of fixing the tariffs.

The next important provision is Section 59 of the Supply Act. For appreciating the argument based on Section 59, it is necessary to bear in mind the distinction in Section 59 as it stood prior to 1978, as amended by Act 23 of 1978 and finally as amended by Act 16 of 1983, quoted earlier,

Prior to 1978, Section 59 required the Board, as far as practicable and after taking credit for any subventions from the State Government u/s 63, not to carry on its operations under this Act at a loss and for this purpose, it was composed to adjust its charges accordingly from time to time. Under the provisions as it then existed, the main thrust was to avoid the Board incurring any loss and for that purpose, it could adjust its charges accordingly from time to time. Section 59 as amended by Act 23 of 1978 required the Board, after taking credit for any subventions from the State Government u/s 63, to carry on its operations under this Act and to adjust its tariffs so as to ensure that the total revenues in any year after meeting all expenses properly chargeable to revenue including those specified, left such surplus as the State Government specified from time to time. The shift was, therefore, towards having a surplus as the State Government specified from time to time. Sub-section (2) then provided guidelines for the State Government in specifying the surplus under Sub-section (1) and mentioned the factors to which regard was to be had for this purpose. The effect of the amendment made in Section 59 by Act 16 of 1983, which came into effect from April 1, 1985, was to provide for a minimum surplus of three per cent or such higher percentage as the State Government is to specify in this behalf. In other words, prior to 1978 amendment, the requirement from the Board was towards ensuring a surplus as specified by the State Government, and after the 1983 amendment the Board is required to ensure a surplus of at least three per cent unless the State Government specifies a higher surplus. This is the scheme of Section 59 and it is Section 59 as amended by 1978 Act but prior to its

amendment by the 1983 Act, with which we are concerned in the present case.

It cannot be doubted that Section 59 requiring the Board to adjust its tariffs for the purpose of Board's finance is to be read along with Section 49 which provides specifically for fixation of tariffs and the manner in which that exercise has to be performed while dealing with any question relating the revision of tariffs.

92. The next Section is Section 79 which talks of power to make regulations. Clause (j) deals with the principles governing the supply of electricity by the Board to persons other than the licensees u/s 49. In accordance with this, each of the Boards has framed regulations. All consumers are required to execute agreements governing the supply of energy.

93. The attack against Section 49 is that it does not contain any norm or guideline with regard to framing of terms and conditions for the supply of electricity and in particular, the demand of payment of interest on the amounts due to the Board. Further, the principle of fairness of action has not been explicitly set out so as to make it a visible guide. The words occurring in the Section "as the Board thinks fit" must be construed as "reasonably thinks fit". We are unable to countenance this argument. A careful reading of Section 49 clearly discloses as was not in M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, Sub-section (1) of the said section starts with the words "Subject to the provisions of the Act and all regulations, if any, made in this behalf. Therefore, the Board has to conform to the various provisions of the Act and the regulations. Section 49 contains two powers:

1. To prescribe terms and conditions of supply; and
2. fix the tariff.

94. No guidelines are required in this regard. In Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, it was pointed out as follows:

We are of the view that the Board has been conferred statutory power u/s 49(1) of the Act to determine the conditions on the basis of which supply is to be made. this Court in Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, , took the view that enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applied to the tariff would equally apply to the security, that being a condition in the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time "of entering into their respective supply agreement. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck down as being without jurisdiction. Section 49(1) of the Act clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit. In exercise of this power the Board had initially introduced the condition

regarding security and each of the petitioners had accepted the term.

(emphasis supplied)

95. Where, therefore, u/s 49 read with Section 79(j) regulations are made, the validity of the regulations could be examined by the Court, whether they are reasonable or not.

96. In *Southern Steel Ltd. Hyderabad Vs. The Andhra Pradesh State Electricity Board, Somajiguda, Hyderabad*, it was observed:

Before we proceed to deal with the rival contentions, it would be appropriate to notice the scope of judicial scrutiny by this Court in such matters. Acting under Article 226 of the Constitution, this Court does not sit as an appellate authority over the Electricity Board. Indeed, the Act has not chosen to provide an appeal against the terms and conditions u/s 49. The jurisdiction exercised by this Court under Article 226 is supervisory in nature. It is to ensure the observance of fundamental right the rule of law, and to keep the authorities within their bounds. Undoubtedly, the Electricity Board is a 'State' within the meaning of Article 12, and hence it is subject to Parts III and IV of the Constitution. The scope of enquiry, therefore, would be to examine whether the power conferred upon the Board by Section 49 of the Act has been exercised so unreasonably and arbitrarily that interference by this Court is called for.

For the purpose of this enquiry it is not necessary for us to go into the question whether the terms and conditions notified u/s 49 are statutory in nature or not. We shall proceed on the assumption that they are not statutory. We shall also proceed on the assumption that the terms and conditions notified u/s 49 ought to be reasonable, in the sense that they must be related to the object and purpose for which they are issued. We are equally aware that the power u/s 49 cannot be allowed to be used for oblique purposes, or for purposes unrelated to the one sought to be achieved by a given condition.

In *B.R. Oil Mills, Bharatpur Vs. Assistant Engineer (D) R.S.E.B., Bharatpur and Another*, it was observed:

Where demand for deposit of cash security for one month's 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 u/s 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.

97. In other words, the terms and conditions notified u/s 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

98. 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 No. 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.

99. 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 (6) of Schedule II of 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.

100. The next question will be: what is the object in demanding security?

101. 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.

102. 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

(d) Period taken in actual disconnection after expiry of, notice. 10 days Total: 74 days

103. 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.

104. 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.

105. 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,

106. For supply of electricity the Board needs finance for production, supply and other charges necessary for supply of electricity. For this purpose, it takes loans from various financial institutions. This is best illustrated if one looks at the transactions of Punjab Electricity Board where electric energy is generated through hydro as well as thermal plants for ultimate sale to the consumers. Of the total power generated about 50 per cent is through hydro plants. The

remaining energy is generated through thermal power plants which are operated on coal/oil. Due to limited hydro resources within the State of Punjab the dependency on power on thermal plants is on the increase. The present requirement for working of thermal plants is more than 52 lakh tonnes of coal per annum. In addition, 60 thousand kilo litre of furnace oil is required. The coal companies/Coal India Limited together with major suppliers or power plant like M/s. BHEL demand cost of coal/spares/ projects in advance for the supply of material. The Board is also required to purchase power from Central projects N.T.P.C., N.H.P.C. in order to meet the demand for power by the consumers. For purchase of such power again advance payments are made by the Board. On such advances the Board is not paid interest. The effect is, the Board is obliged to bear the liability of hundreds of crores of rupees per annum. It has no option but to pay the charges and deposits in order to keep the power available at a level to meet with the demand of the consumers. It is the case of the Board that it has opened letters of credit by making advance deposits in favour of National Thermal Power Corporation and the suppliers. Coal India Limited has also asked the Board to open revolving letters of credit in favour of coal companies/Coal India Limited. Despatch of coal is only against the letter of credit.

107. From the above, it is clear that while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from 2 to 3 months depending upon the category of consumers. To off-set part of the amount the consumer owes to the Board continually to ensure timely payment of bills by the Board to its suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the consumer. The clauses in the contract in relation to conditions of supply of electric energy enable the Board to adjust the bill against such deposits. Therefore, this is not a case of mere deposit of money as in commercial transaction. In demanding security deposit it is open to the Court to take note of pilferage as laid down in *Ashok Soap Factory and Another Vs. Municipal Corporation of Delhi and Others*, :

--The variation in the electricity consumed by different consumers indicated that the charge of pilferage of electricity and gross under-utilisation or consumption of electricity compared to the sanctioned load was not without foundation--

108. The meaning of the term "deposit" is given in *Corpus Juris Secundum*, Vol. 26 A,p. 194 quoted in *Davidson v. U.S. C.C.A. Pa*, 292 F. 750, 752 as follows:

In the sense of an Act. A deposit has been described as a mere incident of custody, and, in its ordinary signification, implies something more than mere possession, negatives all idea of loan with contemplation of use for profit, and has been defined as an act by which a person receives the property of another, binding himself to preserve it and return it in kind; the act of one person giving to another, with his consent the possession of personal property to keep for the use and benefit of the first or of a third party. It may mean a permanent disposition of the thing placed or deposited, or a mere temporary disposition or

placing of the thing.

109. In these circumstances, we conclude that the object of security deposit is to ensure proper payment of bills.

110. Three months' security deposit cannot be characterised either unreasonable or arbitrary. this Court had occasion to point out in Jagdamba Paper Industries Pvt. Ltd. (supra) at paragraph 10 which reads as under:

We agree, however, on the facts placed that the stand of the Board that a demand equal to the energy bill of two months or a little more is not unreasonable. Once we reach the conclusion that the Board has the power to unilaterally revise the conditions of supply, it must follow that the demand of higher additional security for payment of energy hills is unassailable, provided that the power is not exercised arbitrarily or unreasonably.

111. Several High Court decisions also had taken this view as seen from Kistna Cement Works, Tadepalli Vs. The Secretary, APSEB, Vidyut Soudha, Hyderabad and Others, :

The reasonableness of such a requirement is explained by the Board in its counter in W.P.No. 2359/75 out of which W.A.No. 156 of 1977 arises. In the counter it was stated as follows:

The consumer is billed for such month separately. The consumers' electricity consumption during the month is billed at the end of the succeeding month and 30 days time is given to him for payment of the bill. If he does not pay the bill his supply is liable to be disconnected after giving one week's notice u/s 24 of the Indian Electricity Act, 1910. Meanwhile he will be consuming the power. So by the time the supply is disconnected to a defaulting consumer he would have consumed energy for 3 months. The Board's interest requires that there should be some protection by way of security of advance payment in respect of the consumption of this three months' period.

This is how the Board sought to explain the reasonableness of the requirement of security representing three months' average consumption charges. Nobody can say that this is unreasonable. For three months a consumer can go on consuming electrical power without paying any charges. It is, therefore, eminently reasonable for the Board to require the consumer to furnish security for three months' charges. Therefore, we are satisfied that the requirement of security for three months' consumption charges is reasonable." At page 295 it was observed thus:

As a matter of fact it may be that the writ appellant and the writ petitioner before us are prompt in paying their electrical dues, but the Board deals with lakhs and lakhs of consumers and it should have a uniform policy in demanding security. It cannot make distinction or discrimination from one consumer to another. That is why a uniform policy has been laid down by incorporating it in the conditions aforesaid. For these reasons we are satisfied that the requirement

of security for three months average consumption charges by way of cash deposit is reasonable.

112. In *Municipal Corporation for Greater Bombay v. D.M. Industries* AIR 1498 Bom 242 it was observed thus:

This brings us to the last argument advanced by Mr. Hidayatullah that Clause 12 of the draft agreement is arbitrary and unreasonable. The argument is that the power to impose conditions cannot be exercised to impose unreasonable conditions and it must also be ascertained whether the condition achieves the object for which it is imposed. On principle, the proposition is undisputable. Clause 12 which can be described as unreasonable and whether this Clause has no nexus with the object of the Act and the Rules. The argument appears to be that if the object of security is to secure payment of bills, then insistence on cash deposits would be unreasonable because the object could also be served by furnishing of any security and it is said that the consumer was willing to furnish a bank guarantee. In addition, it is urged that the period of consumption for which the security is required should not exceed two months and, therefore, the determination of three months is arbitrary.

113. In *Haryana Ice Factory v. Municipal Corporation of Delhi* AIR 1986 Del 78 it was held thus:

Also, the demand of the security was correlated to the consumption Pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non-payment of the charges due. The court cannot enter into mathematical calculations to come to a conclusion that instead of three months, it should be 2-1/2 months. The fixing of the period of security equal to energy consumption of three months is reasonable. It may be that the Haryana Electricity Board has fixed the period of security deposit equal to the amount of energy consumed for a period of two months but that would depend upon the billing cycle adopted by the Haryana State Electricity Board.

114. In *Southern Steel Ltd. Hyderabad Vs. The Andhra Pradesh State Electricity Board, Somajiguda, Hyderabad*, it was observed:

It is also stated by the Board that huge sums are required by it as rotating capital; that it borrows large amounts from organisations like L.I.C. and Banks; that it pays interest to them, and that in such circumstances it is well entitled to require the consumer to co-operate by paying their bills regularly, by giving security deposits, and by conforming to the terms and conditions of supply. It is argued that this consideration was also one of the bases of condition No. 28. We do not think it necessary to express any opinion on this question, though the truth of the matter cannot be denied. There are two views upon the matter. The petitioners say that the interest burden should be reflected in the tariffs, while the Board says that interest burden can be reflected in consumption deposits, and not necessarily in tariffs. All that we can say is that there no hard and fast

rule in this behalf. The interest burden can be reflected either in tariffs, or can be sought to be set off by calling upon the consumers to make deposits. In this case, however, it is unnecessary to go into this aspect, since the requirement of three months deposit', in our opinion, cannot be said to be unreasonable and unjustified having regard to the facts mentioned above. It cannot be said that the said condition is so unreasonable and arbitrary as to call for interference by this Court under Article 226 of the Constitution. We reiterate that even if this Court comes to the conclusion that the deposit should not be 3 months, but 2 months 7 days, or 2-1/2 months, it would not be entitled to interfere in the matter, not being an appellate authority. It cannot substitute its own opinion for the opinion of the Board. It can interfere only when the exercise of power is shown to be arbitrary, and unrelated to the object sought to be achieved.

We are in agreement with the above extracts.

The validity of Electricity Board to pay interest on Security Deposit:

115. Now, we come to the crucial question as to whether interest is payable on security deposit or advance consumption deposit. We will examine from the following angle:

(a) The scheme of Electricity Acts. (b) Schedule VI of the Supply Act. (c) Interest Act, 1978 (d) Equity or Common Law.

(a & b) Scheme of Electricity Acts & Schedule VI of Supply Act:

116. It is the submission of Mr. Shanti Bhushan, learned Counsel appearing for the respondent against Rajasthan Electricity Board that the scheme of the Electricity Act and Supply Act together with the rules suggest the payment of interest. The Board is not entitled to utilize the security deposits for augmenting its finances as they are meant to secure the Board against default in payment of the bills. The correctness of this argument may now be seen:

There is no statutory provision which casts an obligation on the Board to pay interest on security deposit. However, reliance is placed on model form of draft conditions of supply as is found in Annexure VI, traceable to Rule 27 of Indian Electricity Rules, 1956. Clause 14 relating to security deposit of the said Annexure reads:

-Interest at the rate of... per cent per annum will be paid by the licensee on deposits exceeding Rs. 25/-.

(Emphasis supplied)

117. The model form is applicable only to a licensee as defined in Section 2(4) of the Electricity Act.

Though Rule 27 prescribes a model form it is not compulsory even for a licensee to adopt the model condition of supply. This is because Rule 27 itself stipulates-"the model conditions of supply contained in Annexure VI, may with such

variations as the circumstances of each case require, be adopted by the licensee." Therefore, there is an option available to adopt with such modifications. In such a case, the adoption of the model form becomes permissive. In this connection, Section 26 of the Supply Act, to which we have made a reference earlier, must be looked at. Though the Board is to have powers and obligations of a licensee under Electricity Act, the second proviso to this Section assumes importance. It reads:

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

118. Second proviso of the Supply Act leads us to Schedule VI. This Schedule has been framed in exercise of powers under Sections 57 and 57A, In defining "clear profit" paragraph (2) of clause XVII, Item (V) makes a reference, as interest on security deposits which is a part of expenditure properly incurred by the licensee. From this it is impossible to hold that this clause imposes an obligation on the licensee to pay interest on security deposits. All that would mean is, if interest is paid then it qualifies as an item of expenditure properly incurred. This is the position with regard to licensee. But this cannot apply to the Board, which as stated above, is not a licensee. For the same reason Item LI (c) of Form IV of the Electricity Rules relating to interest paid and accrued on consumers' security deposits is of no avail because that relates to the manner of keeping accounts by the licensee, not being applicable to a Board.

119. In the above premises, it follows that there is nothing to indicate under the scheme of the Electricity Act or Schedule VI of the Supply Act that interest must be paid on the security deposit.

(c) Interest Act: applicability

120. As regards the applicability of Interest Act, we find that the Division Bench of Rajasthan High Court has erred in holding that it is applicable. Section 4(2)(g) of the Interest Act of 1978 reads as under:

Notwithstanding the aforesaid and without prejudice to the generality of the provisions of Sub-section (1), the Court shall in each of the following cases allow interest from the dates specified below to the date of institution of the proceedings at such rate as the Court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed namely:

(a) Where money or other property has been deposited as security for the performance of an obligation imposed by law or contract from the date of deposit.

121. This section has no application to a case where on account of a contractual term or a statutory provision payment of interest is not permitted.

122. A careful reading of Section 4(2) of the Interest Act would disclose that it merely enlarges the category of cases mentioned in Section 4(1). Even otherwise, there is nothing to indicate that Section 4(2) could override other statutory provisions or a contract between the parties. No doubt, Section 4(2) contains a non-obstante clause. But, such a clause is restricted to the provisions of Interest Act and cannot extend to other laws or a contract between the parties.

123. Accordingly we overrule the judgment of Rajasthan High Court which holds the Interest Act is applicable.

124. The deposit made cannot be equated to a fixed deposit. It has already been seen that in the case of daily supply of electricity, there is a consequential liability to pay for each day's consumption of electricity. To ensure that payment, the security deposit is furnished. Hence, it cannot be equated to a deposit at all. It is in the nature of a running current account.

(d) Position in Equity or Common Law.

125. If this be the position, could interest be claimed either on equity or common law? The argument on behalf of the consumers is, if money belonging to any person is used by someone else he is obliged to pay interest for the period of its user. Halsbury's Volume 32 (page 53 para 106) defines "interest" as "the return or compensation for the use or retention by one person of a sum of money belonging or owed to another". Therefore, it is contended that the Board is clearly in the position of a trustee in respect of this money since the money is deposited by the consumer in trust with the Board to secure the Board against default in payment of interest. The object of the deposit is to secure the payment of consumption charges. These charges may vary depending upon the daily consumption, depending on- the level of supply. The amount due by way of consumption charges would also be liable to be appropriated. Therefore, it is incorrect to state that the Board is a trustee. The relationship between the Board and consumer is" not that of a trustee and a beneficiary but a depositor and deposittee. This is not even a case of a constructive trust u/s 90 of the Indian Trust Act, since run advantage is gained by the Electricity Board in derogation of the rights of the consumer in view of what we have observed above.

126. Strictly speaking the word "interest" would apply only to two cases where there is a relationship of debtor and creditor. A lender of money who allows the borrower to use certain funds deprives himself of the use of those funds. He does so because he charges interest which may be described as a kind of rent for the use of the funds. For example, a bank or a lender lending out money on payment of interest. In this case, as already noted, there is no relationship of debtor and creditor.

We may now refer to Halsbury's Vol. 32 para 108:

108. When Interest is payable at common law. At common law interest is payable (I) where there is an express agreement to pay interest; (2) where an

agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned; (3) in certain cases by way of damages for breach of a contract (other than a contract merely to pay money) where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.

Except in the cases mentioned, debts do not carry interest at common law.

127. Consumption security deposit does not fall under any of the categories mentioned above. Para 109 says:

Equitable right to interest. In equity interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor, such a mortgagor and mortgagee, obligor and obligee on a bond, personal representative and beneficiary, principal and surety, vendor and purchaser, principal and agent, solicitor and client, trustee and beneficiary, or where the debtor is in a fiduciary position to the creditor. Interest is also allowed on pecuniary legacies not paid within a certain time, on the dissolution of a partnership, on the arrears of an annuity where there has been misconduct or improper delay in payment, or in the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which would have entitled the plaintiff to interest at common law, or has wrongfully prevented the plaintiff from doing something which would have so entitled him.

This paragraph is also inapplicable to the present case.

128. Even a case of wrongful detention of money cannot arise. In AIR 1938 67 (Privy Council) the question arose whether interest was payable on damages on account of wrongful detention of money. It was held:

The Interest Act however contains a proviso that "Interest shall be payable in all cases in which it is now payable by law." This proviso applies to cases in which the Court of equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in *Maine and New Brunswick Electrical Power Co. Ltd. v. Hart* 1929 AC 631:

In order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as for example, non-performance of a contract of which equity can give specific performance.

The present case does not however attract the equitable jurisdiction of the Court and cannot come within the purview of the proviso.

129. The very passage was not by this Court in *Union of India (UOI) Vs. A.L. Rallia Ram*, .

130. The argument of Mr. G. Ramaswami, learned Counsel, that the deposit does

not contemplate appropriation is not correct because in the nature of contract it is liable to be appropriated for the satisfaction of any amount liable to be paid by the consumer to the Board for violation of any conditions of supply in the context of wide scale theft of energy, tempering with the meters and such other methods adopted by the consumers. Therefore, the said consumption security deposit serves not only to secure the interest of the Board for any such violation but should serve as a deterrent on the consumer in discharging his obligations towards the Board.

131. Mr. G.Ramaswami would rely on *Riches v. Westminster Bank Limited* 1947 AC 390.

132. That is a case which arose under Income Tax Act. That has no application to this case. What came up for consideration in *A.L. Rallia Ram's* case (supra) was the power of the Board to award interest. Hence, that case has no application. Accordingly, it is held that the claim for interest cannot be legally founded either on common law or equity. As is rightly contended by Mr. Kapil Sibal, learned Counsel and the other learned Counsel appearing for the various Boards, it is the Board which should be entitled to receive interest on energy supplied to the consumers on credit as the consumers enjoy a credit facility as noted already. We are also unable to accept the argument advanced on behalf of consumers that because the Electricity Boards charge interest on belated payments, interest must be paid on security deposit. Interest on belated payments is by way of penalty. That has no bearing.

Clause providing for non-payment of interest: Whether unreasonable?

133. While the terms and conditions of supply in Andhra Pradesh, Uttar Pradesh and Bihar provide for payment of interest at certain rate, in the case of Rajasthan and Orissa the Boards have clearly stipulated that no interest shall be payable on the securities furnished to the Board. Whether that clause could be considered unconstitutional or arbitrary? In examining the constitutionality of this provision, in that it is violative of Article 14 of the Constitution of India, the following factors have to be borne in mind:

1. Article 14 does not mandate mathematical exactitude or scientific precision.
2. The mode and the period of security vis-a-vis the billing practice must form the consideration.
3. The consumer with open eyes has entered into the agreement and solemnly undertaken to abide by the conditions regarding non-payment of interest. He cannot resile from the condition because there is nothing inherently objectionable about such a condition nor is such a condition per se illegal or void as opposed to public policy. It is not uncommon in commercial transaction, such a provision is entered into.

134. The argument that the Board is monopolistic in character and therefore, the consumers have no other option but to enter into contract appears to be

misconceived. The Board u/s 49 of the Supply Act is entitled, apart from framing uniform tariff, to insist upon such terms and conditions as the Board thinks fit. This has also been so stated in Jagdamba's case(supra). The consumption security deposit whether or not it carries interest is a condition precedent for the supply of electric energy. We are clearly of the view that the scrutiny by the Court in determining the unconstitutionality of a provision not providing for interest must be tested on the following touchstone:

135. In imposing such a condition has the Board acted as a private trader and thereby shed off its public utility character? By referring to Hindustan Zinc Ltd. (supra) we have earlier pointed out the inter-relationship between Sections 49 and 59 as noted by this Court. We are, therefore, of the view that in imposing such a condition the Board has not acted as a private trader. The nature of deposit has a rational relationship to the object which is incorporated as a condition of supply.

136. Some of the learned Counsel appearing for the consumers would draw our attention to Section 59 of the Supply Act as well. Under the said section the Board is obligated to carry on its operation as to ensure that it generates a surplus of 3 per cent or as specified by the State Government. The Board is obligated to adjust its tariffs for ensuring such surplus. The condition of supply requiring a consumption security deposit has a direct bearing on the operations of the Board which are to be conducted in such a manner as to ensure a surplus. The language in Section 59 of the Supply Act is "carry on its operations under this Act and adjust its tariffs." The language of the said section is not by adjusting tariff. Therefore, the argument that the only manner in which the Board can achieve a surplus is to adjust its tariffs does not flow from the language of Section 59. So read, in the context of the insistence of a security deposit which has direct bearing on the operations of the Board is per se reasonable and constitutional.

137. We will assume, for a moment, that the contract is an adhesion contract. But still, it is not unconscionable.

138. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, "adhesion contract" is defined quoting Black's Law Dictionary, Fifth Edition, at page 38, as follows:

Adhesion contract.- Standardized contract form offered to consumers of goods and services on essentially 'take it or leave it' basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms. Not every such contract is unconscionable.

139. With reference to these contracts the Court offered relief to the parties against such a clause if it is so unreasonable as to be unconscionable. As a matter of fact at page 211, paragraph 83 of Central Inland Water Transport

Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, it stated thus:

Yet another theory which has made its emergence in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power. Lord Denning, Mr. appears to have been the propounder, and perhaps the originator at least in England, of this theory. In *Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd.* 1973 QB 400 where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier from liability arising to the indemnified from his own negligence, Lord Denning said (at pages 415-416):

The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago:

there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused' John. Lee & Son (Grantham) Ltd. v. Railway Executive 1949 All ER 581.

It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so.

(emphasis supplied.)

Farms worth on Contracts, 2nd Edn. 319,320 para 4.27 states:

4.27 Precursors of Unconscionability. Courts of equity did not share the reluctance of common law courts to police bargains for substantive unfairness. Though mere "inadequacy of consideration" alone was not a ground for withholding equitable relief, a contract that was "inequitable" or "unconscionable" one that was so unfair as to "shock the conscience of the court" would not be enforced in equity. In one such a case, a man promised to give a 20 percent interest in all property that he might later acquire in Alaska in return for the promisee's payment of \$1,000 and his cancellation of an \$11,225 debt of questionable collectability. When the promisor acquired property worth over \$750,000, the promisee sought specific performance. The court refused to grant it. Though the fairness of the bargain was to be judged as of the time that the bargain was made, in equity as at common law, here the "inadequacy of consideration" for the promise sought to be enforced was "so gross as to render the contract unconscionable.

140. In dealing with the validity of the agreement containing a clause relating to minimum guarantee this Court had occasion to observed in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, as follows:

It is true that the agreement is in a standard form of contract. The standard

clauses of this contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed: "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would arise a strong presumption that their terms are fair and reasonable." *Schroeder (A.) Music Publishing Co. Ltd. v. Macaulay* 1974 (3) All ER 616. In such contracts a standard form enables the supplier to say : "If you want these goods or services at all, these are the only terms on which they are available. Take it or leave it." It is a type of contract which the conditions are fixed by one of the parties in advance and are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

141. In the light of the above discussion, we hold that the clause not providing for interest is neither arbitrary nor palpably unreasonable, nor even unconscionable. In holding so we have regard to the following:

1. The consumer made the security deposit in consideration of the performance of his obligation for obtaining the service which is essential to him.
2. The electricity supply is made to the consumers on credit as has been noted above.
3. The billing time taken by the Board is to the advantage of the consumer.
4. Public revenues are blocked in generation, transmission and distribution of electricity for the purpose of supply. The Board pays interest on the loans borrowed by the Board. This is in order to perform public service. On those payments made by the Board it gets no interest from the consumers.
5. The Board needs back its blocked money to carry out public service with reasonable recompense.
6. The Board is not essentially a commercial organisation to which the consumer has furnished the security to earn interest thereon.

142. We should also observe that the rate of interest on security deposit cannot be equated with the rate of interest on the fixed deposit. First of all, if the consumption charges are to be appropriated the moneys accrued by way of deposits cannot be held in fixed deposits. Nor all deposits need carry interest in every transaction. Secondly, the nature and character of the security deposit is essentially different from fixed deposit. It is worthwhile, in this connection, to refer to Companies (Acceptance of Deposits) Rules, 1975. In Rule 2 it is stated:

2. Definitions.- In these Rules, unless the context otherwise requires.-

(a)---

(b) "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-

(i) ---

(ii) ---

(iii) ---

(iv) ---

(v) any amount received from an employee of the company by way of security deposit;

(vi) any amount received by way of security of as an advance from any purchasing agent, selling agent, or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service;-

143. We may add that merely because the English Acts provide for interest, it is not necessary the same should be adopted here as well.

144. Thus, we hold that the Division Bench of the Rajasthan High Court erred in striking down Condition No. 20 of the General Conditions of the Rajasthan Electricity Board as violative of Article 14 of the Constitution of India.

145. Has this Court decided the question of rate of interest in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, In that case the following two points were raised as seen from paragraph 3 at page 511:

1. The enhancement made in the security amount towards the meter is without any justification.

2. The enhancement of security deposit was not warranted.

146. On the question of interest in paragraph 11 at page 515 in Jagdamba's case (supra) it is stated thus:

On the security amount interest at the rate of 4 per cent was initially payable. The same has already been enhanced to 8 per cent per annum. Since the amount is held as security, we indicated to the counsel for the Board that security amount should bear the same interest as admissible on fixed deposit of Scheduled Banks for a term of years and we suggested keeping the present rate interest in view that it should be enhanced to 10 per cent. Board's counsel has now agreed that steps would be taken to enhance the present rate of interest of 8 per cent to 10 per cent with effect from October 1, 1983.

147. It requires to be carefully noted that the question of interest on security was not raised before the Court. Therefore, the Court had no occasion to decide this issue of interest. That part of the judgment, as rightly contended by Mr. Soli

J. Sorahjee, learned Counsel, is sub-silentio. However, the learned Counsel for the consumers pressed into service the various orders passed by this Court in relation to interest and urged that it is concluded by those orders. We are unable to accept this argument. All the orders have their root in Interlocutory Application No. 1 of 1989 in Writ Petition No. 578 of 1987. That order is extracted in full:

We have heard counsel for the parties. Mr Gopal Subramaniam, counsel for the State Electricity Board on instructions states that the initial deposit which has been made by the consumer petitioner, to the tune of Rs. 10,07,378.81 was intended as security for payment of energy dues. In terms of our order of 5th May, 1988, the petitioner would be entitled to the interest on that amount from the date of the deposit at the rate of 12% per annum. Mr. Gobind Mukhoty, counsel for the petitioner now agrees to deposit the balance amount of Rs. 6,91,621 minus the interest which is said to be the additional security and while making the deposit of the additional amount, the petitioner is entitled to deduct the interest already accrued on the deposit of Rs. 10,07,378.81 from the date of the deposit at the rate of 12% per annum. The balance amount after deduction of the interest shall be deposited in two equal quarterly installment, the first being due by 15.10.89,

The application for direction is disposed of accordingly.

Based on this, in Writ Petition No. 613 of 1990 it was suited thus:

In view of the order made by this Court in the connected matters on September 7, 1989, after hearing parties in Writ Petition No. 578/87 on the amount deposited by the consumer as security, interest at the rate of 12% would be admissible. The writ petition is disposed of accordingly.

148. Two other orders remain to be seen. One rendered in W.P.5582 of 1989 which was disposed of by consent and the other in W.P. No. 576 of 1990 where the writ petition disposed of in the following manner:

If the Electricity Board has been directed to allow interest at the rate of 12% per annum on the security deposited with the Board by the petitioners similarly situated, the claims of the petitioners should similarly be dealt with by the Board. The Writ Petition is disposed of.

149. On careful examination of the above orders, we do not think the Court ever intended to adjudicate upon the rate of interest or render a decision on that question. Therefore, it cannot be contended that the disposal of Writ Petition No. 613 of 1990, though by a Bench of 3- Judges would be binding on us because, as pointed out above, it was entirely based on interlocutory order. We are of the view that we are free to decide the question on its merits.

150. The argument of Mr. Anil Divan, learned Counsel that unequals are treated equals has no basis. It may be that the consumers of electricity, where it is raw material, would be prompt in their payment in their own interest. On that basis,

it cannot be contended that they cannot be treated in the same way as defaulters. The test, in our considered opinion, is whether in the general application of law there is any discrimination. Merely because some of the consumers are prompt those isolated cases cannot render the provision unconstitutional. We may usefully refer to the following cases:

151. In *The Collector of Customs, Madras v. Nathella Sampathu Chetty* 1962 (3) SCR 786 it was observed:

The deleterious effects of smuggling, as pointed out in the extract from the Report, are real and it is not in dispute that the prevention and eradication of smuggling is a proper and legally attainable objective and that this is sought to be achieved by the relevant law. If therefore for the purpose of achieving the desired objective and to ensure that the intentions of Parliament shall not be defeated a law is enacted which operates somewhat harshly on a small section of the public, taken in conjunction with the position that without a law in that form and with that amplitude smuggling might not be possible of being effectively checked, the question arises whether the law could be held to be violative of the freedom guaranteed by Article 19(1)(f) & (g) as imposing an unreasonable restraint. That the restrictions are in the "interest of the general public" is beyond controversy.

In *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, it was observed:

The levy of the cess u/s 27 of the Act is not based on the principle of quid pro quo. Its object is not to repair all residential premises, but to preserve and prolong their lives in order to avert the dilemma caused by the acute shortage of residential accommodation on the one hand, and the reluctance and/or inability of the owners to carry out repairs resulting from the Rent Act, on the other, and to establish an agency so that structural repairs to buildings in dangerous or ruinous conditions can be carried out. The finances for these objects are provided from a fund from the impugned cess and contributions by the State and the Corporation.

The contention that some of the buildings falling in categories B and C would not need structural repairs throughout the life or the Act or that such repairs would be carried out in buildings not cared for by defaulting landlords, takes no notice of the fact that the primary object of the Act is not to repair all buildings subject to cess but to prevent the annually recurrent mischief of house collapses and the human tragedy and deprivations they cause. The cess being thus levied to prevent such disasters, there is no question of unequal treatment between one class of owners and another. The classification of buildings into three categories is based, as already stated, on their age and the construction current during the periods of their erection. It is, therefore, based on an intelligible differentia and is closely related to the objects of the legislation. There is, therefore, no question of unequals being treated as equals, as each building of the Board has to be

structurally repaired if the need were to arise.

In *B. Banerjee Vs. Smt. Anita Pan*, it was observed:

Moreover, what is the evil corrected by the Amendment Act? The influx of a transferee class of evictors of tenants and institution of litigation to eject and rack-rent or rebuild to make larger profits. Apparently, the inflow of such suits must have been swelling slowly over the years and when the stream became a flood the Legislature rushed with an amending bill. Had it made the law merely prospective, those who had, in numbers, already gone to Court and induced legislative intention would have escaped the inhibition. This would defeat the object and so the application of the additional ban to pending actions could not be called unreasonable. To omit to do so would have been unreasonable folly. The question is whether those cases which were filed several years ago should have been carved out of the category of transferees hit by the Act? Where do you draw the line? When did the evil assume proportions? These are best left to legislative wisdom and not court's commonsense although there may be grievances for some innocent transferees.

If this be the paradigm of judicial review of constitutionality, we have to ignore exceptional cases which suffer misfortune unwittingly. The law is made for the bulk of the community to produce social justice and isolated instances of unintended injury are inevitable martyrs for the common good since God Himself has failed to make perfect laws and perfect justice. Freaks have to be accepted by the victims rightly or wrongly as forensic fate

In *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, it was observed:

Maybe, some stray money-lenders may be good souls and to stigmatize the lovely and unlovely is simplistic betise. But the legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations. So viewed pragmatics overrule punctilious and unconscionable money lenders fall into a defined group. Nor have the creditors placed material before the Court to contradict the presumption which must be made in favour of the legislative judgment. After all, the law-makers representatives of the people, are expected to know the socio-economic conditions and customers. Since nice distinctions to suit every kindly creditor is beyond the law-making process, we have to uphold the grouping as reasonable and the restrictions as justified in the circumstances of the case. In this branch, there are no finalities.

152. The attack on additional consumer deposit is that no reasons have been adduced for additional demand. It stands to reason that if there is revision in the rate of tariff there must be an upward revision in the consumption security deposit since it has direct bearing to the level of supply in consumption of electricity. For example, in the State of Uttar Pradesh, the tariffs were adjusted upwards in October 1986. The revision in the form of an additional security deposit with interest at the rate of 3 per cent was made in January 1987. These facts indicate the rationale in the demand of additional security deposit. As

stated above, this being a condition of supply, no reason need be given at the time of upward revision. Therefore, we reject the argument of Mr. Govind Mukhoty, learned Counsel in this regard.

153. In view of the above finding, upholding the clause relating to non-payment of interest, for example, Rajasthan and Orissa, what is to happen to such of those cases where interest is provided like Andhra Pradesh, Uttar Pradesh and Bihar? In all those cases wherever the Electricity Boards have framed a provision for payment of interest after adjusting its finances at a stated rate they cannot be allowed to delete such a clause. The provision for interest has been made by the various Boards having regard to the overall budgetary and financial position. Further, keeping in view the quantum and mode of security deposit and billing and recovery practice. Nor again, could the Board withhold payment of interest on the basis of this judgment. However, if there is any change in the circumstances affecting the budgetary and financial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case.

154. We also add that notwithstanding Jagdamba's case (supra) as on today, Haryana Electricity Board has dispensed with payment of interest. We make it clear by this judgment that we are not deciding the validity of such a provision since the matter is stated to be pending.

In conclusion, we hold:

- (1) Section 49 of the Supply Act is valid.
- (2) The nature of consumption deposit is to secure prompt payment and is intended for appropriation.
- (3) There is no liability on the Electricity Board either under the statute or common law or equity to pay interest.
- (4) Conditions and the terms of supply providing for non-payment of interest is not so unconscionable as to shock the conscience of the Court.
- (5) No reason need be given for enhancement of additional security deposit.

155. Accordingly we uphold the judgment of Andhra Pradesh High Court and reverse the judgment of Rajasthan High Court.

156. In the result, the following cases filed against Andhra Pradesh Electricity Board are dismissed:

S.L.P.(C) Nos. 13004/89, 14995/89, 14629/89, 14899/89, 15739/89, 15817/89, 7475/90, 6374/90, 9661-65/90, 5461/90, 6371/90, 5294/90, 6769/90, 5492/90, 5921/90, 5559/90, 4793-94/90, 4791-92/90, 6375/90, 6570/90, 12270/90, 9926/90, 11548/90, 2600/90, 6372-73/90, 6035-44/90, 6505/90, 6374/90,

6094/90, 6765-68/90, 6462/90, 5306-08/90, 9132/90, 12424/ 90,6370/90, C.A.NO. 1779/90,S.L.P.(C) Nos. 17465/91, 17679/91, 17865-66/91, 20125/91, 19532/91, 18043/91, 19586-93/91, 19597-600, 20076/91, 21/92, 649/92, 2563/92, 5782-83/ 92, 8336/92, 9124-25/92, 9488/92, 12318/92, 12506/92, 12610/92, 12805/92, 12804/92, 12814/92, 14439/92, 14449/92, 14555/92, 1739-43 & 43A/92, 4512/92, 13593/92, C.A.No. 2409/92, W.P. (C) Nos. 603/92, 455/92, 3558/83, 566/92, 1353/89, 48/92, 362/92, 1293/ 89, 6770/90.

157. The Transfer Petition (C) No, 366/92 filed by the Andhra Pradesh Electricity Board is allowed.

158. The following cases filed by Rajasthan State Electricity Board are allowed:

C.A Nos. 4714/91 & 4928-43/91, SLP(C) Nos.446/92, 703/92, 12941/90, 433-36/92, 439-42/92, C.A.Nos. 4512/92, 4510/92, 4511/92, 2800/92, 1204/92, 406-436/92, No. 20/ 92, 46/92, 47/92, 50/92, 53/92, 449-452/92, 494/2, 516/92, 48/92, 49/92, 51/92, 52/ 92, 54/92, 55/92, 43-45/92, 56-72/92. 428-432/92, 443-444/92, 453-457/92, 503-08/92, 512-14/92, 530-33/92.

159. The following cases filed by the Bihar Electricity Board are allowed:

SLP (C) Nos. 11799/89, 1856/90, 8318/92, 16028/92.

160. The following cases against Uttar Pradesh Electricity Board are dismissed.

W.P.(C) Nos, 513/87, 804/87, 1144/87, 743/87, 531/87, 725/87, 739/87, 526/91, 577/ 87, 801/87, 833/87, 769/87, 676/87, 578/87, 728/87, 762/87, 818/87, 526/87, 744/87,742/ 87, 540/87, 1238/87, 738/87, 684/87, SLP (C) Nos. 2952-56/1987, 15885/91 & 12902/ 91.

161. The W.P,(C) No. 1317/90 filed against Punjab Electricity Board is dismissed.

162. All the I.A.s are allowed,

163. However, there shall be no order as to costs.