

(2005) 12 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 270 of 2003

George Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Electricity Act, 1910 — Section 24

Kerala Conditions of Supply of Electricity Energy Regulations, 1990 — Regulation 14

Citation : (2006) 1 ILR (Ker) 397 : (2006) 2 KLT 903

Hon'ble Judges : Rajeev Gupta, C.J.;S. Siri Jagan, J

Bench : Division Bench

Advocate : R. Sudhir, for the Appellant; P. Santhalingam and Lakshmi Narayanan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—This Writ Appeal is filed by 50 Low Tension consumers of electricity challenging the judgment of the learned Single Judge in O.P. No. 38006 of 2002 upholding the demand of the Electricity Board for three months" probable current charges of the appellants as additional security deposit under Clause 14 of the Regulations Relating to Supply of Electrical Energy, 1990. In the Original Petition, the appellants challenged the power of the Electricity Board to demand additional security deposit. However, in view of the Supreme Court decision in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, on the basis of which the learned Single Judge upheld the demand, the appellants are now confining their challenge against the demand to the extent the Electricity Board discriminates between High Tension and Extra High Tension consumers on the one hand and Low Tension consumers on the other, in so far as for High Tension and Extra High Tension consumers, the security deposit is only two months" probable current charges whereas in respect of Low Tension consumers, the amount of security will be equal to three months" probable current charges of the consumer. The learned Single Judge had repelled this

contention of the appellants also relying on the decision of another learned Single Judge of this Court in the decision of Kurikattil Rubber Industries v. K.S.E.B. reported in 1999 (1) KLT 529, the relevant portion of which was quoted by the learned Single Judge in the impugned judgment, which reads as follows:

The Board is perfectly justified in demanding security deposit in accordance with Regulation 14 of the Conditions of Supply of Electrical Energy. Contention of counsel for the petitioners that there is discrimination between the petitioners and EHT and HT consumers cannot be justified. Only the amount equal to two months' probable current charge has been demanded by the Board as security deposit as far as HT and EHT consumers are concerned, since they are monthly paying huge amount, they have to execute minimum guarantee agreement also. HT and EHT consumers invest considerable amount of money for setting up their industries. Their number is comparatively less and they are under the control of a special officer of the Board. Generally, they cannot increase the load or consume more energy than that has been agreed upon at the time of initial connection, unlike the LT consumers. In the case of HT & EHT consumers, reading is taken monthly, unlike in the case of other consumers. The number of LT consumers are considerably large, and if they do not pay the amount, Board will have to take coercive steps for recovery of the amount, and it will also be difficult for the Board to initiate recovery proceedings against all of them. LT consumers and domestic consumers cannot be equated with EHT and HT consumers. Regulation 14 itself says that as far as EHT and HT consumers are concerned, they need provide only bank guarantee, if the security deposit exceeds Rs. 5 lakhs, i.e. they have to pay Rs. 5 lakhs in cash and the balance by way of bank guarantee. LT consumers and domestic consumers form a class by themselves and cannot be equated with EHT and HT consumers. This difference is recognised by the statute itself. Therefore the contention of counsel for the petitioners that they are discriminated against, cannot stand in the eye of law.

2. The contention of the learned Counsel for the appellants is that in that decision, the learned Single Judge went on the wrong assumption that in respect of High Tension and Extra High Tension consumers, the billing cycle is monthly, whereas the billing cycle of Low Tension consumers are bi-monthly. Counsel submits that although in respect of some categories of Low Tension consumers like domestic consumers, the billing cycle is two months, in respect of the category of Low Tension industrial consumers like the petitioners, the billing cycle is only one month. In support of this contention, the appellants have produced Annexures A1(a) to A1(e) bills issued to one of the appellants, which would go to show that in respect of appellants also, billing cycle is one month. On the strength of the said contention, the appellants contend that there is no essential difference between the High Tension and Extra High Tension consumers in the matter of consumption of electrical energy as also billing cycle and mode of payment. There was no reasonable classification as between them and, therefore, the demand of three months' probable current charges from the appellants as against two months' for Extra High Tension and High Tension

consumers offends Article 14 of the Constitution of India and is therefore illegal and unsustainable.

3. We have heard learned Counsel for the appellants as well as learned standing counsel for the Electricity Board.

4. At the outset, we may state that although in Kurikaitil Rubber Industries case (supra), there was a reference by the learned Single Judge that the billing cycle of HT and EHT consumers is monthly unlike LT consumers, that was not the only reason given by the learned Single Judge to hold that there is reasonable classification as between HT and EHT consumers on the one hand and LT consumers on the other. In fact, the learned Judge gave several other reasons for holding that HT and EHT consumers are a class apart from LT consumers as is evident from the portion from the judgment quoted above.

5. Further, in Ferro Alloys Corporation's case (supra) itself, the Supreme Court had specifically addressed itself to the question as to whether the demand for security deposit at the rate of 3 months probable consumption by the consumer is reasonable. After referring to judgments of various High Courts, the Supreme Court categorically held that the demand for three months' probable current charges cannot be held to be unreasonable or unconscionable. In paragraph 111 of the judgment, the Supreme Court held as follows:

111. Three months' security deposit cannot be characterised either unreasonable or arbitrary. This Court had occasion to point out in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, 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 bills is unassailable, provided that the power is not exercised arbitrarily or unreasonably.

The Supreme Court also quoted with approval the views of various High Courts on the point as follows:

112. 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 of 1975 out of which W. A. No. 156 of 1977 arises. In the counter it was stated as follows:

The consumer is billed for each 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, para 11, 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 a 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.

xxx xxx xxx 114. In *Haryana Ice Factory v. Municipal Corporation of Delhi* AIR 1986 Del. 78, it was held thus: (AIR p. 89, para 24)

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."

115. In *Southern Steel Ltd. Hyderabad Vs. The Andhra Pradesh State Electricity Board, Somajiguda, Hyderabad*, it was observed: (AIR pp. 68-69)

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 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 is 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.

6. In any event, as held by the learned Single Judge in Kurikattil Rubber Industries's case (*supra*), there are several reasons to hold that the HT and EHT consumers form a distinct, separate and intelligible class of consumers in view of the following facts.

(1) The HT and EHT consumers have to execute a minimum guarantee agreement and have to pay such minimum guarantee amount irrespective of whether they consume electricity or not to cover the minimum guarantee.

(2) HT and EHT consumers invest considerable amount of money for setting up their industries.

(3) Their number is comparatively small and they are under the control of a special officer of the Board.

(4) Generally, they cannot increase the load or consume more energy than what has been agreed upon at the time of initial connection unlike the LT consumers.

(5) The number of EHT and HT consumers need provide only bank guarantee if the security exceeds Rs. 5 lakhs. That is, they have to pay Rs. 5 lakhs in cash and the balance by way of bank guarantee.

7. As against this, the number of LT consumers are considerably large and if they do not pay the amount, the Board will have to take coercive steps for recovery of the amount and it will also be difficult for the Board to initiate recovery proceedings against all of them.

8. The above circumstances would show that the classification made by the

Electricity Board in Condition No. 14 of Regulations Relating to Conditions of Supply of Energy, 1990 is a very reasonable and distinct classification, which cannot be faulted. As such, the question of any discrimination or violation of Article 14 of the Constitution of India, does not arise at all and the challenge against the demand for three months' probable current charge as security deposit from Low Tension consumers as against two months' probable current charges from Extra High Tension and High Tension consumers is not sustainable in law. Therefore, there is no infirmity in the judgment of the learned Single Judge.

In the above view, we do not find any merit in the appeal and the same is dismissed, but, without any order as to costs.