(2013) 06 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 1637 of 2011 and 4075 of 2012

Indira APPELLANT

Vs

Kerala State Electricity Board RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2014) 1 KLJ 452 : (2014) 1 KLT 59

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : T.C. Suresh Menon and A.R. Nimod, for the Appellant; P.P. Thajudeen, T.R. Rajan, Anish James and Shyson P. Manguzha, Government Pleader, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Challenge in both these cases, filed by a common petitioner, is against validity of Reg. 14(4) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 (hereinafter referred to as the ''Terms and Conditions''). Inter alia the petitioner is challenging demands issued for payment of special security deposit based on an order passed by the 1st respondent Board on 2.9.2008 (Ext. P4 in W.P. (C) No. 4075/2012). Regulation 14(4) of the Terms and Conditions provides that, if an intending consumer is not the owner of the premises to be electrified, he shall furnish a consent agreement in Form No. 4 obtained from the owner of the premises. If he is unable to produce such consent, service connection can be effected on the applicant executing an Indemnity Bond in Form No. 5. It further provides that a special deposit equal to an amount of security deposit is also payable whenever such connection is effected to the occupier/tenant and not to the owner. The petitioner is challenging Reg. 14(4) to the extent it insists upon for payment of special deposit equal to the amount of security deposit for getting connection by the occupier/tenant.

2. Section 47 of the Electricity Act, 2003 (the ''Act'' for short) empowers the distribution licencee to require deposit of reasonable security for the supply of

electricity. It provides that the quantum of security should be as determined through Regulations, and the security is intended for payment of all monies which may become due to the licencee in respect of electricity supplied to the consumer or in respect of the cost of electric line, electrical plant, meter etc., provided for supplying electricity. Sub-section (1) of S. 47 provides that, if a person fails to give such security, the distribution licencee can refuse to give supply of electricity. Sub-section (2) enables the distribution licencee to require any person to give reasonable security when the security given by him has become invalid or insufficient. Sub-section (3) provides that if any person fails to give the security as contemplated under sub-section (2), the distribution licencee can discontinue supply for the period during which the failure continues.

3. From the provisions enumerated, it is clear that the 1st respondent Board being a distribution licencee is entitled to demand security deposit for providing connection and is also entitled to demand additional security if it is found that the security deposit already furnished is not sufficient. However, the quantum of security deposit which can be insisted upon should be as determined through Regulation.

4. Regulation 13 of the Kerala Electricity Supply Code, 2005 (the ''Supply Code'' for short) deals with security for supply of electricity. Reg. 13(2) provides that security charged by the licencee shall be as per the rates approved by the Commission. Under Reg. 13(4) the licencee can require a consumer having monthly billing to maintain with the licencee an amount equivalent to two months electricity bills as security. In the case of consumer having bimonthly billing the amount to be maintained as security is equivalent to three months electricity bills. Under Reg. 13(5) the licencee is required to review adequacy of security deposit in the first quarter of every financial year or whenever tariff revision is effected, based on the average consumption of the preceding financial year and shall demand shortfall if any by giving notice or should adjust excess security amount if any in the next bill, as the case may be. The provisions in the Supply Code indicate powers vested on the 1st respondent Board to demand security at the time of providing connection and afterwards on the basis of periodic review regarding adequacy of such security.

5. It is evident from S. 50 of the Act that the Kerala State Electricity Regulatory Commission is empowered to formulate the Supply Code in order to provide recovery of electricity charges and other connected matters. S. 181 of the Act confers powers on the State Commission to make Regulations consistent with the Act and the Rules, generally to carry out provisions of the Act and in particular in relation to matters enumerated thereunder. The matters enumerated under sub-section (2)(v) of S. 181 includes, reasonable security payable to the distribution licencee under sub-section (1) of S. 47. Therefore it is evident that the State Commission is empowered to formulate Regulations with respect to prescribing of security deposit payable by the consumers. Therefore Reg. 14(4) of the Terms and Conditions impugned herein is well within the legislative competence of the

Regulatory Commission. Hence challenge raised by the petitioner against introduction of such a restriction on the basis of lack of power or competence cannot be sustained.

6. Another ground raised against the insistence for payment of special security deposit, is discrimination among the consumers. The consumers who are owners of the building which is to be electrified and the consumers who are only occupiers/tenants of the building to be electrified, are distinct class. It cannot be construed that both these group are persons similarly placed or identically situated in the matter of providing and enjoying of electricity connections. As such no discrimination can be attributed with respect to insistence for payment of special security deposit.

7. Learned counsel appearing for the petitioner contended that there is absolutely no rationale behind such insistence and there is no rationale objective sought to be achieved by insisting payment of special security deposit. In the counter affidavit of the 1st respondent Board it is contended that, insistence for special security deposit is with a clear and rationale objective. The Board cannot proceed against property of the premises where the connection is given, in the case of connections provided to occupiers/tenants, in contra distinction with the owners of the building to whom such connection is provided. In the case of the owners, dues to the Board can easily be recovered from the property wherein the connection is provided. It is not possible in the case of tenants/occupiers. Hence it is contended that there is a clear basis for the differentiation between the consumers and there is clear rationale in prescribing different rates of security deposit. The impugned provisions will not violate Arts. 14 and 15 of the Constitution of India, is the contention.

8. This court is of the view that the rationale behind the objective is acceptable in view of the explanation provided. This is especially because of the fact that the provisions of the Act as well as the Regulations enables the 1st respondent Board to recover amounts due it by resorting to revenue recovery and also enables recovery of such amount as if it is public revenue due on land. It is evident that in cases where revenue recovery steps are initiated, easy recovery is facilitated when the consumer is the owner of the premises which is electrified. Hence I am of the view that challenge against Reg. 14(4) of the Terms and Conditions of Supply cannot succeed.

9. In W.P. (C) No. 1637/2011 the impugned demand is made with respect to an existing connection provided in the name of the petitioner, who is the tenant occupying the premises. Learned counsel for the petitioner contended that Reg. 14(4) of the Terms and Conditions of Supply cannot be invoked against an existing consumer, if the special security deposit was not insisted at the time of providing electric supply. Reg. 14 of the Terms and Conditions deals with the procedure for making applications for service connection. The records which need be accompanied along with an application for providing service connection is stipulated therein. Reg. 14(4) insist on a further requirements in cases where the

application is submitted by tenant or occupier who is not owner of the premises. Therefore the special deposit contemplated under Reg. 14(4) can be insisted only as a pre-condition for providing service connection to tenants/occupiers. Once the connection is provided to any tenant or occupier the security deposit which he is bound to maintain is only the security deposit as prescribed under Reg. 15 of the Terms and Conditions. The special deposit insisted under Reg. 14(4), being a pre-condition for providing supply, cannot be construed as security deposit to be maintained while enjoying the connection by any tenant or occupier, is the contention. I find merit in the contention because of the fact that the special deposit is insisted not as part of the security deposit contemplated under Reg. 15. Therefore it is to be held that the 1st respondent Board is not entitled to make any demand for special deposit over and above the security deposit, which is insisted upon at any time when the connection provided. Such a view is also justified on the basis that Reg. 14(4) insisting on special deposit cannot have any retrospective operation with respect to connections already provided. Therefore the impugned demand in Ext. P3 in W.P. (C) No. 1637/2012 to the extent of insisting payment of special deposit cannot be sustained. It is made clear that the respondent will be entitled to insist upon for payment of security deposit if found insufficient or for payment of any further amount apart from the special deposit for providing additional connected load, as applicable under the impugned Regulation.

10. Yet another contention raised by the petitioner is that, the respondents are not entitled to demand interest on the special deposit, as provided under S. 47(4) of the Act. It cannot be disputed that, special deposit demanded under S. 14(4) will have only the characteristics of security deposit referred under S. 47. Consequently, provisions relating to payment of interest contained in sub-section (4) of S. 47 will equally apply in the case of special deposit.

11. In view of the discussions contained herein above, the Writ Petitions are dismissed rejecting the challenge raised against validity of Reg. 14(4) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005. In W.P. (C) No. 1637/2011 the challenge against Ext. P3 is to the extent it demanded for payment of special deposit in the case of an existing connection, is allowed. If any deposit has already been made in this regard the same shall be adjusted in the future bills.