(1999) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19188 of 1996

ITC Bhadrachalam Paperboards Ltd. APPELLANT

Vs

APSEB, Hyderabad and others RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:
Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 2000 AP 47 : (1999) 6 ALD 684

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : Mr. K. Srinivasa Murthy, for the Appellant; Mr. K.N. Jwala, SC for APSEB, for the Respondent

Judgement

1. The petitioner is a public limited company carrying on the business of manufacturing paper and paper boards. It is one of the high tension consumer of electricity from the Respondents-Electricity Board. The petitioner is contesting the proceedings of the Board levying additional charge in respect of the consumption deposit. The petitioner company questioned the action of the Board in demanding three months consumption deposit by filing WP No. 11475 of 1988. According to the petitioner it need not pay consumption deposit over the above two months average consumption charges. Hence sought for a writ of mandamus restraining the Respondents-Electricity Board from collecting the consumption deposit for the third month. An interim order was passed on 13-12-1988, as per which the respondent-Board was directed to adjust out of the amount lying with it towards two months consumption deposit and the balance was directed to be adjusted against the future bills. The petitioner was also directed to furnish a bank guarantee for the consumption deposit equal to one month. In pursuance of the said order, the petitioner submitted bank guarantee for a total amount of Rs.87,61,516/- representing one month average consumption charges. Finally the said writ petition was dismissed on 21-3-1996 and the bank guarantee was encashed by the respondent-Board. Later the second respondent issued proceedings dated 20-8-1996 directing the petitioner to pay additional charges to

a tune of Rs.1,02,97,900/- for the belated payment of the deposit. The additional charges are calculated at the rate of 1.5% per month from the due date for payment of additional consumption deposit as per the notice till the date of encashment of the bank guarantee i.e., 19-7-1996. This demand is being contested by the petitioner.

2. The learned Counsel for the petitioner contended that the consumption deposit is to secure proper payment of consumption charges. As the petitioner was promptly paying all the outstanding consumption bills as and when they are due no prejudice has been caused for not making additional cash deposit of one more month''s charges; that it is not open to the Board to levy interest, which is termed as sur-charge; that the purpose of the consumption deposit was to secure the proper payment of the consumption charges and as the petitioner had provided a bank guarantee which is almost identical to the deposit, there was no justification for the Board to levy additional charges. According to the petitioner as there was stay of the operation of the Board proceedings during the pendency of the writ petition and immediately after the disposal of the writ petition the respondents have encashed the bank guarantee, it is not open to the Board to levy and collect additional charges during the pendency of the proceedings before the Court in the light of the various judgments of the Supreme Court to which the respondent-Board is also a party. The learned Counsel also contended that unless there is a specific direction in terms of the interim order to pay interest or additional charges the petitioner is not under an obligation to pay and the respondents have no right to charge such additional charges in the light of the decision of the Supreme Court in the case of South Eastern Coalfields Ltd v. Century Textile and Industries Ltd., 53 ELT, 522. It is stated that the levy of the additional charge has no rational or proximate nexus with charges for the consumption of energy by the consumer and in fact it is in the nature of penalty for default. It is stated that there is no express provision empowering the respondent-Board to impose additional charge on the consumers. Further it is stated that even assuming that the Board has got the power to levy, but under the circum stances, it is not the case to attract any liability to pay any amount as and by way of additional charge. The learned Counsel referred to various observations made by the Supreme Court in the case of Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, and contended that the question of payment of interest also would not arise in the present case. The learned Counsel also distinguished the cases relied upon by the Board stating that in those cases the issue was relating to the non-payment or belated payment of consumption charges; whereas in the present case it is only the case of additional consumption deposit. The learned Counsel also contended that as the respondents have collected the third month''s consumption deposit as soon as the writ petition is dismissed by way of encashment of bank guarantee and as there is no stipulation to pay interest in terms of the interim order, the petitioner is not under an obligation to pay the additional charge and the respondent is not entitled to demand and collect the same.

3. The respondent-Board filed a counter denying the allegations. It is stated prior to the demand of third month''s consumption deposit the Board used to collect only two months average consumption charges towards the consumption deposit. While so the Board had issued proceedings demanding three months average consumption deposit instead of two months average consumption deposit. The said proceedings were questioned by the petitioner unsuccessfully and the said demand raised by the Board requiring the consumers to make three months average consumption deposit was even upheld by the Supreme Court. When the petitioner questioned the proceedings of the Board demanding three months average consumption deposit, by virtue of the interim order the petitioner avoided the payment of third month''s average consumption deposit. Having availed the benefit of retaining the third month''s average consumption deposit with the petitioner and having deprived the respondent-Board with the said amount, in the light of the terms and conditions of power supply, the Board is entitled for raising a demand for additional charges for belated payment of third month''s consumption deposit. It is contended that the terms and conditions of the supply framed by the Board were held to be statutory and are binding on all the consumers even as per the decision of the Supreme Court. Therefore, the additional charges demanded by the respondent is proper and in accordance with the law.

4. The learned Counsel also contended that a similar issue was considered by a Division Bench of this Court in the case of Rayalaseema Roller Flour Mills, Cuddapah Vs. A.P. State Electricity Board, Vidyut Soudha, Somajiguda, Hyderabad and Another, , where the levy of additional charge was upheld, though in respect of the consumption charges. The learned Counsel also contended that there is no difference between the consumption charges and consumption deposit as both are payable by the consumer under terms arid conditions of supply. The learned Counsel also contended that as per the interim orders in the present writ petition the petitioner paid only 1/3rd of the demanded additional charges and the balance of 2/3rd has not been paid till date though the demand was raised as long back as on 16-10-1996. The learned Counsel also contended that the demand raised towards additional charge is in terms of clause 28.6 which contemplates the levy of surcharge at the rate of 1.50% per month for the delay in payment. It is therefore contended that the writ petition is liable to be dismissed as it is squarely covered by the decisions of this Court.

5. The issue to be decided is whether the levy of additional charges for the belated payment of one month''s consumption deposit is legal and valid.

6. The demand of additional charge came to be raised in the following circumstances:

By the Board proceedings the respondent-Board demanded third month''s consumption deposit in addition to the two months consumption deposit already collected from the consumers. When the said proceedings were questioned in this Court in a writ petition, an interim order was passed directing the petitioner to furnish bank guarantee for the third month''s consumption deposit. Finally the writ petition was dismissed and the bank guarantee was encashed in the year 1996. As the petitioner did not pay the third month''s consumption deposit from 19S9 onwards till the bank guarantee was encashed, the Board raised a demand for additional charges for the belated payment of the third month''s consumption deposit. The contention of the petitioner is that the consumption deposit was in the nature of a security deposit for the purpose of securing proper payment of consumption charges. As it is only intended to secure the payment of consumption charges and as the petitioner was properly and promptly paying all the consumption bills, no prejudice has been caused for nonpayment of the third month''s consumption deposit. Therefore, there is no case for levy of any additional charge.

8. Another contention raised by the petitioner is when the demand for the third month''s consumption deposit was questioned in this Court, an interim order was passed directing the petitioner to furnish bank guarantee and as there was no stipulation for payment of any interest or additional charge in the event of the failure of the petitioner, the respondents are not entitled to raise a demand for additional charge.

9. The learned Counsel for the petitioner strongly relied upon the observations of the Supreme Court in the case of Ferro Alloys Corporation Ltd., (supra). In facf, in that case the issue relates to the validity of the demand for consumption deposit. Though it was contended before the Supreme Court that such demand was unreasonable and arbitrary, it was not accepted by the Supreme Court and in fact upheld the right of the Board to raise a demand and collect the additional consumption deposit. In fact, the observations made by the Supreme Court shows that the collection of the said amount was tc 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. It was also observed that the Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from two to three months depending upon the category of consumers. It was also observed that 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 fact, one of the argument advanced in that case before the Supreme Court was that the consumers are entitled for interest 011 the consumption deposit collected by the Board. The said contention was negatived by the Supreme Court. Though the learned Counsel for the petitioner strongly relied upon certain of the observations in the said judgment those observations would not come to the aid of the petitioner to hold that the petitioner is not liable to pay additional charge in view of the Terms and Conditions of Supply. In fact, in the case of M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, , the Supreme Court held that the terms and conditions notified by the Board are statutory in nature and are binding on all the consumers. The learned Counsel

also relied upon a decision of the Supreme Court in the case of South Eastern Coalfields Ltd., (supra), in support of his contention that unless there is a provision in terms of the interim order, the respondent-Board is not entitled for collecting additional charge/interest. A perusal of the said judgment shows that no such an issue was adjudicated by the Court. There is a mere reference that while ordering refund of the cess collected subsequent to the judgment rendered by the Madhya Pradesh High Court, along with the interest in cases where there is an interim direction or undertaking to pay such interest at the rates specified on such direction or undertaking. In fact, here we are not concerned with the issue of refund of the amounts collected. In the present case we are concerned with a case where the non-payment of the deposit as demanded by the respondent-Board. The petitioner obtained an interim order and furnished only bank guarantee and avoided the deposit. Therefore the said decision would not come to the aid of the petitioner.

10. In fact, the Standing Counsel for the respondent-Board stated that the issue is covered by the decision of this Court in the case of M/s. Rayalaseema Roller Flow Mills, (supra). The same was objected by the petitioner''s Counsel. A perusal of the said decision shows the issue that fell for consideration relates to the imposition of additional charge for non-clearance or belated clearance of consumption charges. The said issue came to be considered when a similar issue was decided by a single Judge of this Court upholding the levy of additional charge including the levy at the rate of 24%. But, however, granted relief for a limited period holding that the petitioners are not liable to pay the additional charge for the period between the date of striking down the notificalion by the learned single Judge by his judgment dated 6-9-1989 and the date on which the said judgment was set aside by the Division Bench on 2-4-1990. The writ appeals filed against the said judgment were also dismissed. Subsequently some of the matters where a similar issue arised for consideration were came to be considered by the Division Bench. In fact, before the said Division Bench, the petitioners argued for a limited relief of reducing the rate of additional charge from 24%. The Division Bench of this Court, after considering the decision of the Supreme Court in the case of Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, , where a similar issue was considered extracted the following relevant observations of the Supreme Court:

"We, therefore, agree with the High Court that Adoni Ginning cannot be read as laying down the proposition that the grant of stay of a notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the Court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply -- which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning.

It is equally well settled that an order of stay granted pending disposal of writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner inspite of his failure. We do not think that any such unjust consequence can be countenanced by the Courts..... It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification the operation of which was stayed."

11. The Division Bench has further observed that the decision of the Supreme Court in Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, , read with the decision in Kanoria Chemicals, (supra), puts the principle beyond doubt that the electricity consumers cannot be absolved of the liability to pay interest or late payment surcharge in respect of the bills issued during the period of operation of stay or injunction order or even during the period when the enhanced tariff notification could not be put in force by reason of the decision of the Court striking down the same. However, the said Division Bench after considering the peculiar facts of the case reduced the additional charge from 24% to 18% in respect of only those cases where the petitioners could not get the stay of payment of the additional charges and therefore paid the additional charges in almost all the cases during the pendency of the writ petitions. The Division Bench also specifically denied the said benefit in respect of the petitioners sought for stay of the additional charges due and retains under the benefit of stay till the disposal of the cases. Though the learned Counsel for the petitioner contended that the issue in the above cases relates to the payment of additional charges in respect of the belated payment of consumption bills and the ratio laid down in that case would not apply to the present case as according to him the consumption deposit is only for the purpose of securing the proper payment of the consumption bills and as the Board did not suffer any prejudice, therefore there is no case for the collection of additional charge. I do not find any merit in the said contention of the petitioner. The consumption charges as well as the consumption deposits are payable as per the terms and conditions of supply. The same terms and conditions of supply provides for the levy of additional charge for the non-payment or belated

payment of consumption deposit also. This fact is not disputed. Admittedly the petitioner obtained an interim order and though furnished a bank guarantee in terms of the interim order the respondent-Board was deprived of the consumption deposit and the petitioner had the benefit of retaining the same. Therefore, as per the terms and conditions of supply the additional charge levied by the respondent-Board is legal and valid and the petitioner is not entitled to any relief.

12. In the result the writ petition is dismissed. But under the circumstances without costs.

