
(1990) 04 CAL CK 0046
In the Calcutta High Court
Case No : Matter No. 4038 of 1987

Kalimata Cold Storage Pvt. Ltd. and Another	APPELLANT
Vs	
The West Bengal State Electricity Board and Others	RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Citation : (1991) 1 CALLT 396

Hon'ble Judges : B.P. Banerjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Banerjee, J.—In this writ application the petitioner has challenged the memo dated 30th June 1987 issued by the Senior Accounts Officer Burdwan (O & M) Circle of the West Bengal State Electricity Board, office of the Superintending Engineer, Burdwan whereby the petitioner was directed for re-submission of bank guarantee with enhanced rate of security deposit of Rs. 80,000/- as against the existing security deposit of Rs. 9,650/- and for other relief.

2. The fact of this case is that the petitioner No. 1 is a sister concern of Nayak Paper Board Mills, Nayak & Company, Nayak Engineering Pvt. Ltd., Nayak Steel, Nayak Pasteners and being small scale industries which are including the writ petitioner and it is stated that the writ petitioner gets concessional tariff relating to the charges of electricity from the respondents. At the time of giving electric connection to the petitioner concerned, the respondents directed the petitioner to deposit a sum of Rs. 9,650/- as security deposit and in Clause (19) of the agreement entered by and between the parties it was provided that "the consumer shall on being so required by the Board provide a security deposit equivalent to the sum of Rs. 9,650/in the shape of Bank draft. It was also provided that on like requisition increase the amount of such security in the event of the same becoming exhausted or being diminished or being insufficient." It is stated that the said security deposit was duly furnished by the petitioner and was lying in the custody of the respondents. The said payment

was made by cheque dated 24th December 1970. It is stated that without any rhymes and reasons the petitioner received a memo dated 30.6.87 issued by the senior Accounts Officer of the West Bengal State Electricity Board for re-submission of bank guarantee with enhanced rate of security deposit of Rs. 80,000/- for covering period of 6 years as against the existing security deposit of Rs. 9,650/- as stated above and it was directed that such deposit was made on or before 15.7.87. It was further stated in the said memo that if the petitioner failed to provide with bank guarantee within the stipulated period, the respondents would be compelled to disconnect the line without any further reference. It was stated that prior to the issue of the said memo the petitioner was not informed about any enhanced rate of tariff on the basis on which the deposit to such a heavy figure. On receipt of the said memo the petitioner by the letter dated 3rd July 1987 prayed for exemption from furnishing security deposit at enhanced rate of Rs. 60,000/-, inter alia, on the ground that the petitioner No. 1 is a small-scale industry (agriculture) and for expansion of the existing unit and conversion from one plant to another had been adopted by the firm and in case there is a disconnection of line by the board, the stock of the potato of the Cold Storage would be perished resulting in loss and sufferance of the potato. The Superintending Engineer, Burdwan (O & M) Circle West Bengal State Electricity Board, the respondent No. 3 by the letter dated 8th July 1987 refused the grant of exemption as prayed for by the petitioner. It is stated in the said letter that "the enhanced security deposit has been sought from all concerned bulk consumers irrespective of big or "the existing security deposit of Rs. 9,650/- only lying at this end will be refunded to you along with the interest after receiving the bank guarantee of Rs. 80,000/- only".

3. In reply to a representation made before the Board the then Engineer of the Board informed M/s. Nayak Papers & Board Mills by the letter dated 3rd June 1986 that-

"There is no doubt that you are an important consumer of the Board. You are aware that in order to arrange for supplying power to the consumers in an around Memari, we had to draw over-head line, which is exposed to the uncertainty of weather and other factors beyond control. Moreover, the areas under Memari and adjoining places are ultimately dependent on D.V.C. as source of Power. In view of above it is difficult for us to arrange for completely uninterrupted power supply to those areas. We are, however looking into the matter for arranging improvement in the supply system as far as practicable."

4. It was further stated that the security deposit which was directed to be paid in initial was found sufficient on the basis of consumption of electricity and that the quantum of electrical energy and the tariff for electrical energy supplied to the petitioner had substantially gone up. It was further stated that the average bill was for about Rs. 5,150/- per month and as such the original security deposit of Rs. 9,650/- was considered sufficient. It was further stated that the present monthly average bill was to the tune of Rs. 70,000/-. It was further stated that

the demand of security deposit of Rs. 80,000/- was reasonable and the said sum would represent the amount of monthly bill for the months of March and April 1987. It was stated that since 1969 the petitioner enjoyed the supply of electrical energy only by furnishing security to the extent of Rs. 9,650/- and the Board was entitled to enhance the amount of security deposit inasmuch as the monthly electricity bill of the writ petitioner had been increased due to increase in quantum of consumption as well as periodical escalation of tariff. It was further submitted that under sub-clause (a) of Second proviso to clause VI(1) of the Schedule to the Indian Electricity Act 1910, it is "provided that the licensee shall be entitled to discontinue supply if the owner and occupier of the property to which the supply is made, has not already given security or if any security given by him has become insufficient or invalid and such owner or occupier fails to furnish the payment as the case may be. It was stated that in this case the Security was found to be insufficient, and that is why the security deposit of a sum of Rs. 80,000/- was demanded from the respondents.

5. The learned counsel appearing on behalf of the petitioner submitted that the said Electricity Board is not a trading corporation and that the said corporation was established under the provisions of the Electricity (Supply) Act 1948. The duties of the Board as provided u/s 18 of the Electricity (Supply) Act 1948 are inter alia to supply electricity to a licensee or other person requiring such supply if the Board is competent under this Act do so and carry out schemes for transmission, distribution and generally for promoting the use been entrusted to discharge public duties for the benefit of the generation and distribution of electricity in this state. It was further submitted that the Board cannot arbitrarily increase the security deposit when there was no default on the part of the petitioner for making of payment of any electricity charges which were levied from time to time. It was further submitted that the board have no jurisdiction to increase such security unilaterally without any rhyme or reason and that too without giving any opportunity and/or hearing. It was submitted that the power to impose such security without any rhyme or reason, would result in arbitrary action. It was further submitted that since the initial security was made on the basis of the agreement between the parties, no increase can be made unilaterally. It was further submitted that Clause 19 of the agreement is against public and policy arbitrary power has been conferred upon the respondents to increase the amount without any guideline and as such the same should declared null and void particularly electricity being an essential service. It was further submitted that the agreement that was entered into by the parties, including Clause 19, was in terrorem otherwise the petitioner would not get any electricity. It was submitted that initially the petitioner in order to avoid the dispute tried to obtain a Bank draft but the Bank intimated that unless the full amount in question was deposited no bank draft would be given and that would result in unreasonable restriction on the petitioner's right to carry on trade or business. It was further submitted that the Board is unable to maintain the supply because of its negligence and poor generation of the electricity. Such stoppage of electricity

had already caused and would cause huge loss to the Cold Storage concern, inasmuch as, in the Cold Storage continuous supply of electricity is to be maintained for the purpose of preservation of the goods, of the customers. It was submitted that when the Board is unable to maintain the required and continuous supply of electricity, the Board is estopped from asking for enhanced security under the law/or under the agreement. If the goods of the customers are damaged because of the stoppage of electricity, in that event, the petitioner day to day pay compensates for the damage caused to the customers in respect of their goods which were kept in the Cold Storage. It was submitted that when the corporation cannot maintain supply, the corporation had no jurisdiction from asking enhance security deposit for due payment of the dues of the corporation board. There had been no occasion on the part of the petitioner for making any default whatsoever and as such the demand of security for proper payment of Bill amount is mala fide and capricious.

6. According to the Black's Law Dictionary, the word "security" means "protection ; assurance ; indemnification. The term is usually applied to an obligation, pledge, mortgage, deposit, lien etc. given by a debtor in order to assure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. Document that indicates evidence of indebtedness." "Security deposit" means money deposited as security for full and faithful performance including damages to caused by such parties.

7. The source of power of the Board to ask for and/or to enhance the security deposit is admittedly the provision of Clause VI of the" schedule to the Indian Electricity Act 1910.

VI. Requisition for supply to owners or occupiers in vicinity. (underlined by me).

(1) Where after distributing mains have been laid down under the provisions of Clause IV or Clause V and the supply of energy through those mains or any of them has commenced a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply emergency for such premises, the licensee shall, within one month from making of the requisition or within such longer period as the Electrical Inspector may allow supply and save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continued to supply, energy in accordance with the requisition.

Provided first that the licensee shall not be bound to comply with any such requisition unless and until the person making it:-

(a) Within fourteen days after the service on him by the licensee of a notice in writing in this behalf tenders to licensee a written contract in a form approved by the State Government duly executed and with sufficient security, binding himself to take supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue

not exceeding fifteen per centum of the cost of service line required to comply with the requisition and

(b) Provided, secondly that the licensee shall be entitled to discontinue such supply :-

(c) If the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient and such owner or Occupier fails to furnish security or to make up the original security to a Sufficient amount as the case may be, within seven days after the service upon him of notice from the licensee requiring him to do so....." (underlined by me)

8. What is the effect of this proviso ? can it be interpreted to mean something beyond the subject matter of the main part of the enactment? The effect of an excepting or qualifying proviso, according to the ordinary rules of construction is to except out of the preceding portion of the enactment or to qualify something enacted therein, which but for the proviso would be within it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. (see Craies on Statute law 5th Edition, Page 217) Lush J said in *Mullins v. Treasurer of Surrey* (1880) 5 QBD 170 that "when one finds a proviso to a section,.....the natural presumption is that, but for the proviso the enacting part of the section would have included the subject matter of the proviso."

9. In this case the main part of the provision did not provide power for disconnection of the supply for failure to furnish security, which was added by the proviso. The purpose of furnishing and/or the conditions for which the security is demanded is specifically provided in the main part of the provision. So the reference of the security in the proviso has the same meaning with the security provided in the main part.

10. It is on the strength of this provision that such security deposit has been increased. It is not a case that the security deposit had become invalid and/or there was any reason for which such security deposit was necessary. The petitioner deposited initial security and thereafter, there had been no occasion on the part of the petitioner to make any default in making payment. In this connection, it may be mentioned that clause (vi) of the Schedule provides the provision for requisition of supply to the owners and occupiers and it provides the manner in which the owners and occupiers of the premises in the area under operation, of the board can apply for connection. The said provision provides that "within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him an annual revenue not exceeding fifteen per centum of the cost of the service line

required to comply with the requisition and the proviso which has been quoted above, provides the power on the part of the board to disconnect in case the security deposit has not been made or security is already given has become invalid or insufficient and the petitioner or the occupier fails to furnish the security or make up the original security in sufficient amount. The word "sufficient security" is for binding himself to take supply of energy for less than two years to such amount as will assure to the licensee at the current rate charged by him an annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition.

11. In this particular case, there is no allegation that the petitioner failed to draw the supply of energy for not less than two year to such amount as the petitioner assured the licensee at the current rate charged by him. The provision of clause (vi) reading as a whole makes it abundantly clear that this security is demanded at the initial stage for the purpose of securing the interest of the board (licensee) that the consumer will take supply of electricity for a period not less than two years to such amount as will be assured by the consumer to the. licensee, at certain rates. In case there was a default on the part of the consumer in not taking the assured quantity of electricity, in that event, the security could be forfeited and/or enhanced. This security is to protect the interest of the Board (licensee) with regard to the quantum of electricity assured to be taken by the consumer and if there is any short fall on the part of the consumer in drawing the electricity from the assured quantity and the security payment of monthly electric bills as suggested by the Respondents. In this connection, it may as demanded by the consumer, the board cannot ask for any of the board in respect of drawal of particular amount of electricity and not security for the purpose of keeping many bill amount. Reading the clause (VI) of the Schedule in question in my view, the position makes it clear that this security that is given, is not for any other purpose but for the purpose of protecting the interest of the board by taking an assured amount of electricity or in other words, the scheme of the Act was that a customer will take electricity line by assuring that it would require certain amount of electricity per month and on the basis of that estimate, the board or the licensee gives connection and thereafter, if the consumer fails to consume electricity, in that event, there will be loss on the part of the licensee or the board inasmuch as, the board or the licensee will produce electricity for the purpose of expected consumption and if the consumer fails to take electricity from the board, there will be wastage of electricity. Electricity is a thing which could not be stored, either it would be consumed or it would be automatically destroyed. As soon as the electricity is produced, the same has to be consumed or the same will be lost for ever. It is not like water or other materials which could be stored. The authorities concerned have lost the sight of this important aspect of the matter. It was for the purpose of securing the interest of the board regarding, the consumption of particular amount of electricity this security is demanded and taken. If there is failure or sort fall on the part of the consumer from taking the assured amount of the electricity, in that event, the security

could be forfeited to the extent of their short fall in the matter of consuming the electricity. The word security in the context which is used, could not be interpreted contrary to the very object and purpose in which it is being used. It is needless to point out that the provision of clause (VI) of the Indian Electricity Act is applicable to the board in view of the provision of Section 26 of the Electricity (Supply) Act 1948 by which some other provisions of the Indian Electricity Act have been excluded, but the provision of clause (VI) of the Schedule to that Act is applicable to the board in respect of the area where the dispute laid by the board and the supply of energy¹ through any of them have been commenced.

12. The said proviso makes it abundantly clear that such security had relation with the costs of service line which was led by the licensee of the board to comply with the requisition made by the consumer for such supply. This provision makes the position clear, that the security deposit had no connection with the monthly consumption, but the security deposit is for the purpose of fulfilment of the commitment made by the consumer in respect of the particular quantity of electricity for which the licensee or the board had laid down the service line and invested huge amount on account of mesne and other profits by the board. If a consumer takes electric line on the basis of the assurance that it will consume one kilo watt of electricity and on that basis the board invests huge money for the purpose of laying down and putting meters for the purpose of such supply and thereafter the consumer takes a very small amount of electricity and against that basis small amount of electricity is consumed, in that event, the Board may enforce the security for causing loss to the Board. It is not the object and the spirit of the Act that the consumer will take line inducing huge amount of money not only for the purpose of laying down the plants and machinery also for making the production of the required amount of electricity at the required quantity. Failure to keep the commitment on the part of the consumer, would result in forfeiting of security deposit under the Schedule. There could not be any other purpose for demanding the security. The Board being a statutory Body is bound to act strictly according to the statute. There is no power under the Act and/or the Rules which confer power on the Board to demand security for the purpose protecting the interest of the Board against any further failure of non payment of monthly Bill.

13. The only reason that has been given by the respondents on the affidavit-in-opposition was that in March 1987 the bill amount was Rs. 36,225.09p. and in the month of April 1987 it was Rs. 46,684.42 and accordingly, the average monthly electric bill was calculated Rs. 40,000/- and on that basis the two months bill amount was Rs. 80,000/- was demanded by security deposit. In my view, the said clause (VI) of the Schedule of the Indian Electricity Act do not confer such power upon the board or the licensee to demand security deposit on the basis of the average monthly bill the said security deposit was permitted under the law to be demanded for protecting the interest of the board in the matter of consumption of a particular quantity of electricity by the customer and in case the customer fails to fulfil the commitment in the matter of consumption

of electricity in respect of which the consumer assured that he will consume such amount of electricity, in that event, the security deposit could be forfeited to the extent of loss caused to the board. So far as the electricity bills are concerned, the board is entitled as a matter of right to make disconnection in case any default is made by any consumer in the matter of payment of the monthly electric bill within the time specified or within the extended time. In my view, the ground disclosed by the respondents for enhancement of the biff was not in accordance with the provision of clause (VI) of the Schedule and admittedly, in this particular case, there was no short fall in the matter of drawing electricity by the consumer, namely the petitioner, on the contrary, there has been short fall on the part of the Board in the matter of making the supply because of prolonged load-shedding, a term which is very loosely used as failure to supply electricity, cannot be a term as* load-shedding, but it is a case of stoppage or withdrawal of supply because of non-production or for some other reasons.

14. Secondly, in the instant case, it is not necessary on the part of this court to go into the other question raised in the petition as I have already held on construction of the provision of the Schedule and On the basis of the plain meaning of the said Schedule, it is clear that the board as a licensee cannot demand any security deposit on the basis of the monthly average electric bill. The security deposit was to enforce the consumer to take assured amount of electricity arid failure to take assured amount of electricity gives right to the licensee or the board to realise loss On account of failure to take and consume required amount of electricity as per agreement. Accordingly, the demand of security could not be sustained.

15. In the result, the writ petition succeeds. The demand of additional security by bank guarantee a sum of Rs. 80,000/- for a period of six years as demanded by the letter dated 30th July 1987 which is issued by the Senior Accounts Officer, Burdwan (O & M) circle which is annexure "A" to the petition is set aside and the respondents are directed to act on the basis of the security deposit already lying with them and to maintain supply of electricity on the basis of the existing security deposit. This order is passed without prejudice to the right of the board to forfeit the security deposit in case the petitioner found to have failed to consume the electricity less than the amount assured in the agreement in question and in that case, the security deposit may be forfeited and may be enhanced as the board may think fit and proper in the facts and circumstances of the case.

The writ petition succeeds to the extent indicated above. I also make it clear that this order is passed. Without prejudice to the rights of the board to make disconnection in case of failure to pay the electric bill which was consumed and to realise the dues of the board in accordance with law.