(1998) 11 KL CK 0051

In the High Court Of Kerala

Case No : O.P. No''s. 12890 of 1994 and 12215, 15825 and 19639 of 1998

Kurikattil Rubber Industries and Others — APPELLANT

Vs

Kerala State Electricity Board and Another — RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49, 79

Citation : AIR 1999 Ker 254

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : Jose J. Matheikal, for the Appellant; S. Ramesh Babu, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Petitioners are aggrieved by the demand made by the Kerala State Electricity Board, hereinafter called the ''Board'', for payment of additional security deposit as per Regulation 14(d) of the Conditions of Supply of Electrical Energy.

2. Petitioners include LT commercial consumers and domestic consumers. Board has demanded security deposit equal to three months'' probable current charge of the consumer, computed by the Assistant Engineer or Assistant Executive Engineer. In the case of EHT and HT consumers, the amount of security deposit demanded by the Board is equal to the months'' probable current charge of the consumer, as decided by the Chief Engineer and Deputy Chief Engineer. In the case of EHT consumers the security deposit shall be either by cash, D.D. or bank guarantee. Security deposit in respect of other categories of consumers is either by cash or demand draft.

3. Counsel for the petitioners contended that the classification made between LT consumers on the one hand, and EHT and HT consumers on the other hand is unreasonable and arbitrary. Counsel further contended that there is no necessity for demanding security deposit, since the Board has got ample power u/s 24 of

the Indian Electricity Act read with Regulation 32 of Conditions of Supply of Electrical Energy to disconnect electricity supply for non-payment of dues. According to counsel, in any view of the matter, the Board could demand security deposit only based on connected load. Relying on Regulation 14(c) of the Conditions of Supply of Electrical Energy, counsel contended that provision itself shows the basis, and there is no justification in demanding security deposit on the basis of average consumption. Counsel for some of the petitioners contended that even the Board has committed an error in fixing the average. Counsel submitted Board ought to have taken into account electricity charges for one year, starting from January to December, and fixed the average accordingly.

4. Counsel for the Board, however, tried to justify the demand on the basis of Regulation 14 of the Conditions of Supply of Electrical Energy. Counsel submitted that Conditions of Supply of Electrical Energy were framed by the Board in exercise of the powers conferred u/s 790) of the Electricity (Supply) Act, 1948. According to counsel, regulations are therefore statutory in character and all consumers under the Board are bound by the regulations. Counsel contended that the Conditions of Supply of Electrical Energy is itself part of the service connection agreement. Counsel submitted that it is strictly in accordance with the above mentioned regulation and agreement that the Board has demanded security deposit. The purpose for demanding security deposit has also been highlighted by counsel. Counsel further submitted that all the points raised by the petitioners have already been considered by the Supreme Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, .

5. In order to examine the rival contentions, it is necessary to refer to Regulation 14 of the Conditions of Supply of Electrical Energy, which is extracted below:

"14. Security deposit: (a)(i) After approving the service connection estimate by the competent authority, the applicant will be requested to deposit with the Board security for payment of monthly current charge and for safe custody of the Board''s installations in the consumer''s premises. In respect of EHT and HT consumers the amount of the security deposit will be equal to two months'' probable current charge of the consumer, as decided by the Chief Engineer and Deputy Chief Engineer respectively. In respect of I.T. consumers, the amount of security will be equal to three months'' probable current charge of the consumer, as computed by Asst.. Engineer or Asst. Exe. Engineer. The State and Central Government Departments are exempted from payment of security deposit. Corporations, Companies, Boards, Authorities and other undertakings under State/Central Govt. are, however, not exempted from payment of security deposit.

(ii) The security deposit of EHT consumers shall be either by cash, D.D. or bank guarantees. The security deposit of all other categories of consumers shall be either by cash or demand draft. Cash shall be deposited in the Chief Engineer (Ele.)''s Office. The demand draft shall be drawn in favour of Chief Engineer (Electricity).

(iii) The Security Deposit payable by HT consumers upto Rupees five laksh shall be either by cash or demand draft only. Cash shall be remitted in the Deputy Chief Engineer''s Office and Demand Draft drawn in favour of Deputy Chief Engineer. For the amount of security deposit exceeding Rupees five lakhs alone, Bank guarantee is acceptable from HT consumers.

Note:-- It is clarified that if the total security deposit payable by an HT consumer is Rupees seven laksh, Rupees five lakhs shall be remitted in the form of cash or demand draft. For the balance of Rupees Two Lakhs alone, Bank guarantee is acceptable.

(iv) The Security Deposit payable by LT consumers shall be either by Cash or Demand Draft only. Cash shall be paid either in Assistant Engineer''s or Asst. Exe. Engineer''s office. Demand Draft shall be drawn in favour of Assistant Engineers or Assistant Executive Engineers.

(v) The Security amount shall be deposited as explained above in full while registering electric connection.

(vi) The security in no other form other than those mentioned in (ii), (iii) and (iv) is acceptable

(b) When a State Government or Central Government office is housed in a private building, revision of security deposit based on increased current consumption shall not be insisted upon provided the following certificate is produced to waive such revision.

"certified that the building having Corporation/Municipality/Panchayat No. ....situated at belonging to Sri/Smt........... (full name and address) and having Electricity meter bearing consumer No............. of .... Section is at present in the occupation of Government to house the office of .... (full name of the office) and as the head of the office 1 am responsible for payment of the current charges. I shall intimate by registered post to the Assistant Engineer/ Assistant Executive Engineer of Electrical Major Section .... as and when the Government vacate the building.''

(c) No interest will be paid on security deposit. The amount of security deposit of the LT consumer shall however be realised subject to the minimum given below :

1. Domestic single phase Rs. 50/- 2. Domestic three phase Rs. 250/- 3. Non-domestic single phase Rs. 75/- 4. Do three phase Rs. 300/- 5. Agriculture Rs. 20 per HP or KVA 6. Industrial Rs. 100/- do.

(d) The Board shall be at liberty at any time to appropriate any security deposit towards payment or satisfaction of any money which shall become due or owing by the consumer. The Board shall also be at liberty to demand enhanced security deposit from consumer at any time during the life of the contract. The balance of the security deposit will be returned to the consumer on the termination of the contract."

Section 49 of the Electricity (Supply) Act, 1948 gives ample power to the Board to prescribe terms and conditions of supply, to fix uniform tariff, etc. The scope of Section 49 of the Supply Act came up for consideration before the Supreme Court in Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, . Supreme Court took the view that the enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rate of tariff under the provisions of the Act. Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, held that what applied to the tariff would equally apply to the security, that being a condition in the contract of supply. u/s 79(j) of the Supply Act, Board can make regulations. It is on the basis of the said statutory power that the Board framed regulations relating to Conditions of Supply of Electrical Energy. Agreements executed by LT and other consumers with the Board provide for security deposit. Security deposit has been provided for the purpose of payment or satisfaction of any money which shall become due or owing by the consumer to the Board, in respect of supply of energy or otherwise under the agreement entered into by the Board with the consumers. Under Regulation 14 as well as the agreements executed between the Board and the consumers, Board reserved its right to revise security deposit. In fact it has power to unilaterally revise the security deposit. Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, upheld the power of the Board to demand additional security deposit. Supreme Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, has dealt with elaborately the scope of Sections 49 and 79(j) of the Supply Act and Conditions of Supply of Electrical Energy by the State Electricity Boards in India. While justifying the stand of various Electricity Boards in the country for demanding additional security deposit, the Supreme Court held as follows ;

"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 high tension consumer. The clauses in the contract in relation to conditions of Supply of Electrical 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. In such circumstances it can be said that the object of security deposit is to ensure proper payment of bills. Three months'' security deposit required from high tension consumers cannot he characterised either unreasonable or arbitrary. The nature of consumption deposit is to secure prompt payment and is intended for appropriation."

Supreme Court also justified the stand of the Board in not paying interest on the security deposit. The Court took the view that the 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. Therefore the claim for interest cannot be legally founded either on common law or equity. 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 advanced on. It cannot, therefore, be said 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. Court also stated that it stands to reason that if there is a revision in the rate of tariff, there must be an upward revision in the consumption security deposit, since it has direct bearing on the level of supply in consumption of electricity. I am of the view that the principle laid down by the Supreme Court in the above mentioned decisions is a complete answer to various contentions raised by counsel for the petitioners.

6. Supreme Court also in a recent decision in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, upheld the power of the Boards in laying down Conditions of Supply of Electrical Energy u/s 79(j) of the Supply Act. Dealing with Section 49 of the Supply Act, the Court held that the said provision empowers the Board to prescribe "such terms and conditions as it thinks fit". The terms and conditions of supply are statutory in character. It is the duty of the Board to arrange for the supply of electricity throughout the State and for transmission and distribution of the same in the most efficient and economical manner. For that purpose it has necessarily got to prevent unauthorised user, pilferage or malpractices by the consumers. Hence the necessary safeguards have to be provided as per the condition of supply so that the consumers will be bound by them. While on the one hand, the Board has to recoup the loss suffered by such pilferage or other malpractices, it has also on the other, got to stop immediately the continuation thereof. Hence the terms and conditions of supply have to provide for compensation as well as immediate disconnection. Providing adequate security by the consumers is to safeguard public interest and also to enable the Board to arrange for the supply of electricity and for transmission and distribution of the same in the most efficient and economical manner. If any of the consumers defaults in payment of energy charges, it is always possible for the Board to proceed against the security amount. If adequate security is not given by the consumer, in order to realise the same. Board has to take other proceedings such as revenue recovery proceedings, and other mode of recovery, which will consume time. On many occasions, this amount may not be realised. In other words, security deposit is security for the Board and for the public at large for uninterrupted supply.

7. 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 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 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.

8. Considering the above mentioned facts, t am of the view that Board is perfectly justified in demanding security deposit from the petitioners. Accordingly the demand made by the Board for security deposit is upheld. Counsel for the petitioners submitted that Board should fix the security deposit taking whole year as the basis. If there is any discrepancy in the matter of fixation of security deposit, it is open to the consumers to make a representation to the Board, in the event of which Board could rectify the discrepancy, if any. However, this will not preclude the Board from collecting security deposit already fixed. Petitioners are obliged to pay the amount demanded and make a representation, if aggrieved, in the event of which Board will consider the same and pass appropriate orders as already mentioned. It is made clear if any amount by way of security deposit has already been paid by the petitioners, the same would be adjusted towards total security amount demanded. Petitioners are given one month''s time to provide security deposit as demanded by the Board, failing which it is open to the Board to take further steps to recover the amount.

Writ petitions are disposed of as above.

