(2009) 09 MAD CK 0194

In the Madras High Court

Case No : W.A. No''s. 175, 225, 226 and 1092 of 2002

Madura Coats Ltd., Dindigul Spinners Association and South India Small Spinners Association — APPELLANT

Vs

The State of Tamil Nadu and The Tamil Nadu Electricity Board — RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:
Electricity (Supply) Act, 1948 — Section 20, 23, 24, 47, 49

Citation : (2009) ELR 837 : (2009) 8 MLJ 1320

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Kirubakaran, J

Bench : Division Bench

Advocate : C. Seethapathy, in WA. No. 175/2002, R.S. Pandiyaraj, in WA. Nos. 225 and 226/02 and M. Kamalanathan, in WA. No. 1093/2002, for the Appellant; S. Ramasamy, A.A.G. assisted by J. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—These writ appeals have been preferred against the orders passed in W.P. Nos. 15685, 20970, 14691 and 13951 of 2001 dated 28.9.2001, 25.9.2001, 25.9.2001 and 25.9.2001 respectively dismissing the aforesaid writ petitions confirming the proceedings of the third respondent in his proceedings permanent B.P.167 dated 11.10.2000 in respect of withdrawal of payment of interest on current consumption deposit by members of the Appellants-associations and quash the same.

2. The case of the appellants herein after referred to as "petitioners" before the learned Single Judge was that the withdrawal of payment of interest on current consumption deposit is un-constitutional and the amendment is arbitrary.

3. The appellants herein are low tension and high tension electricity consumers and they were covered by the terms and conditions of supply of electricity of Tamil Nadu Electricity Board. Before availing the supply, the petitioners have to pay initial current consumption deposit as per Clause 15.2. Clause 15.05 prescribes that current deposit for high tension service connection including

those under L.T. IV two part system will be reviewed and refixed once a year in the months of April and May. The average of the current consumption charges for the preceding 12 months prior to the month of April of that year would be arrived at and a sum equal to one and half times this average will be calculated. The higher of the two viz, the calculated amount and the initial current consumption deposit to be held will be the revised current consumption deposit. Clause 15-09 prescribes that interest would be paid by the Board on Current Consumption Deposit at the rate as may be fixed by the Board from time to time.

4. Class-36.00 deals with the Board''s rights regarding the terms and conditions of supply of electricity. 36.01 states that the board will have the right to change from time to time, the terms and conditions of supply of electricity in respect by special or general proceedings. Clause 36.02 states that the Board will have the right to relax, modify or waive any of the Clauses of terms and conditions or supply of electricity in respect of any consumer or any Clause of consumer.

5. The petitioners are aggrieved by the impugned order namely permanent B.P. (FB) No. 167 dated 11.10.2000 by which the interest regarding current consumption deposit was deleted. The said amendment was made in exercise of powers conferred u/s 49 of Electricity (Supply) Act 1948, (Central Act LIV 1948 read with Section 79(J) of the Act. The petitioners contended that withdrawal of interest on the current consumption deposit would add more sufferance to the textile and spinning mills, which were already taking heavy financial burden. The petitioners contended that the Board altered the conditions and denied the payment of interest on current consumption deposit.

6. The respondents contended that the Electricity Board was already facing heavy loss and the Electricity Board was unable to pay interest on current consumption deposit. It is also submitted that the Board had loss in 2000-2001 financial year was a sum of Rs. 10,95,92,00,000/- and in view of heavy loss it was decided to repeal the conditions which provided for payment of interest on current consumption deposit. It is further submitted that the board had to make advance payment out of its borrowed funds, which carry heavy interest for procuring coal and laying of lines, procurement of ships, cost of coal and cost of oil and other inputs to both public sector and private sector organisations. The Board had to make colossal advance payments to all its suppliers when the consumers avail electricity supply from the respondent Board on credit basis without basis without liability for making payment with interest.

7. The respondent Board submitted that the consumption charge are not collected in advance and after allowing the consumer for 30 or 60 days as interval as the case may be and demands are made by giving time to the consumer to pay consumption charges. It was also put forth by the Board that the collection of current consumption deposit from the consumer was to ensure proper payment of current consumption charges and to avoid accrual of huge arrears by the consumers and such a deposit is only to protect the interest of the Board which supplies the energy to the consumers in advance and collect the

credit till date of billing and payment.

8. The Single Judge heard the writ petition and dismissed the writ petitions sustaining the validity of the amendment. Against the dismissal of writ petition only the present writ appeals have been preferred.

9. Learned Counsel for the appellants firstly contended that there was no reason for amendment given in the proceedings permanent P.B. (FB) No. 167 dated 11.10.2000. Secondly as per the judgement of the supreme Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, , he contended that the third respondent did not follow the principles of natural justice while issuing the impugned board proceedings which was challenged in the writ petitions. Thirdly he contended that the learned single judge did not consider the unilateral action on the part of the electricity Board to pass the amendment. As per Clause 15.09 of the terms and conditions of the of supply of electricity, the Board was required to pay interest on current consumption deposit and unilateral decision as against the terms and conditions is of violative of principles of natural justice. On the whole he assailed the judgement of the learned Single Judge and sought for setting aside the same and quashing the amendment withdrawing the payment of interest on consumption deposit.

10. On the other hand Mr. Ramaswamy, learned Additional Advocate General contended that taking into consideration of the financial constraint of the board, the decision to withdraw the Clause regarding payment of interest on consumption charges was taken. The board had incurred heavy loss apart from that the electricity has to be supplied in advance and payments are being collected subsequently. Hence for proper payment of charges for the electricity consumption by the consumer, deposits are held by the Electricity Board and it cannot be equated with the fixed deposit held by the bank.

11. A perusal of the judgement passed by the learned single judge would show that the learned Judge took various factors and correctly decided the issue in proper perspective. The learned Judge while coming to the conclusion that the amendment is not unilateral or unreasonable or arbitrary, referred to various terms and conditions of supply of electricity of Tamil Nadu Electricity Board and the provisions of the Tamil Nadu Electricity Act.

12. As per Clause 15.04, the current consumption deposit is being collected and as per Clause 15.09 interest was paid on current consumption deposit. As per Clauses 36.01, 36.02 power was given to the Board. Clauses 36.00,36.01 and 36.02 read as follows:

36.00 Board''s rights regarding the terms and conditions of supply of electricity:

36.01 The Board will have the right to change from time to time the terms and conditions of Supply of Electricity by special or general proceedings.

36.02 The Board will have the right to relax, modify or waive any of the Clauses of terms and conditions of Supply of Electricity in respect of any consumer or any class of consumers.

Clause 36.02 states that the Board will have the right to relax, modify or waive any of the Clauses of terms and conditions of supply of electricity in respect of any consumer or any class of consumer. When the Board retains the right and power to change the terms and conditions, the consumers having agreed to the terms and conditions cannot wriggle out the same or otherwise the petitioners are estopped from questioning the amendment made by the respondent board.

13. It is to be seen that terms and conditions of supply of Electricity by the Electricity Board was framed in exercise of powers conferred u/s 49 of the Electricity (Supply) Act 1948. The terms and conditions are subordinate legislation which has been framed as per the statute and the same cannot be questioned.

14. The learned Judge noted that the financial position of the Board in para 14 of the judgement which states that the liability of Electricity Board for the financial year 2000-2001 was Rs. 1,95,92,00,000/- and in view of that only the Board decided to repeal the condition providing payment of interest on current consumption deposit. The learned Judge also noted the prevailing finance condition of the Board due to belated payment of consumption charges. Supply of energy at the concessional rate to the poor agriculturists, hut dwellers has to be met and the grant for the same is being made by the Government only at the end of the year or half yearly and till then the Board has to utilise its funds, generate powers, transmit the power and supply to various categories in the interest of general public. In view of public interest only the terms and conditions of the electricity board had to be amended. Learned single judge relied upon a judgement of the Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, , which held that Section 49 of the Electricity (Supply) Act 1948 provided ample power to change or alter the conditions.

15. Learned Single judge also relied upon the judgement of the Supreme Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, . In that judgement the Apex Court considered the similar question referring to payment of interest on security deposit. The Hon''ble Supreme Court held that the Clause provided for non-payment of interest was unconstitutional or arbitrary after taking note of the practices of various Electricity Board in not paying interest on such deposit. In the said judgement the supreme court held and para 160 is extracted follows:

160. In conclusion, we hold:

(1) Section 49 of the Supply Act is valid.

(2) the nature of consumption deposit is to secure promote payment and is intended for appropriation.

(3) There is no liability on the Electricity Board either under the statute or

common law or equity to pay interest.

(4)Conditions and the terms of supply providing for non-payment of interest is not so unconscionable as to shock the conscience of the court.

(5) No reason need be given for enhancement of additional security deposit.

16. In view of the judgement passed by the Hon''ble Supreme Court the learned Single Judge negatived the contention regarding denial of interest is arbitrary, violation of Article 14 and unconstitutional. It was held that the Division Bench of this court in Tamil Nadu Electricity Board and Another Vs. Sumathi Process Industries (P) Ltd., held that the demands of additional security deposit was questioned and the same was held to be violative by observing that the consumer cannot wriggle out his liability and to secure the payment of minimum guaranteed charges as undertaken by the Board under the terms and conditions of supply.

17. As noted above the electricity board took conscious decision firstly to delete the Clause regarding payment of interest on current consumption deposit; secondly the terms and conditions of the supply of electricity is binding on the consumer; thirdly the Board has got right under Clause 36.00 to vary its terms and conditions and fourthly as held by the Hon''ble Supreme Court the Electricity Board has got power u/s 49 of the Electricity Act to change or alter the conditions as held in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, ; in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, ; in Kaushalya Rani v. M.C.D. and Ors., 1995 Supp. (3) SCC 145 ; and TNEB and Tamil Nadu Electricity Board and Another Vs. Sumathi Process Industries (P) Ltd., .

18. The contention of the learned Counsel for the petitioners that there was no cogent reason given for deleting the payment of interest, as per paragraph 158 of the judgement in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, , it has to be negatived as cogent reason was given. Apart from that in para 160(5) it was decided in that case that no reason need be given for enhancement of additional security deposit. The impugned order of the respondent dated 11.10.2000 reads as follows:

In order to stream like the existing procedure for review of current consumption deposit in respect of L.T. service, orders have been issued in the E.P. cited third fixing slab rate of current consumption deposit to be taken at the time of review to be made once in five years for L.T. a services and dispensing with the payment of interest on current consumption deposit for all H.T. and L.T. consumers with effect from 1.10.2000 onwards.

19. The decision was taken by the board in proceedings dated 12.9.2000 and the reasonings had been explained in detail in paragraphs 3,4 and 5 of the proceedings which are extracted as follows:

3. Representations are being received from the LT consumers about the

correctness of the quantum of demand raised by the Board and the frequency of review. Further, there are representations that no proper accounts are furnished to the L.T. consumers regarding he availability of current consumption deposit at the credit of the consumers.

4. The number of services involved for review of current consumption deposit in respect of L.T. Service is about more than 100 lakhs and the work of adequacy of review involves calculation of average current consumption charges for the preceding twelve months, calculation of interest, preparing demand card in the case of shortfalls, serving of demand cards to the consumers and collection of money from the consumers in time. As the above processing requires more than hours and the Board is finding it difficult to execute these tasks with the huge number of vacancies in the Revenue Branches, there is delay in review and collection of money towards additional current consumption deposit form the L.T. consumers.

5. In order to streamline the existing procedure, a proposal has been placed before the Board in its 834th meeting and the Board has approved the proposal and accordingly the following instructions are issued:

i) The adequacy of current consumption deposit in respect of L.T. services may be reviewed and refixed once in five years in the months of April/May.

ii) For L.T. consumers, the following slab rate of current deposit may be fixed at the time of review:

-- Category Average current Quantum of CCD both consumption charges per for single phase and month based on latest three phase two assessments -- All L.T. consumers Hut Upto Rs. 200 Rs.500 (LT IB), Pub-lighting & Rs. 201 to Rs. 400 Rs.1000 Water Supply (LT IIA) Rs. 401 to Rs. 1000 Rs. 2500 and Agriculture (Free Rs. 1001 to Rs. 2000 Rs. 5000 Supply) (LT IV) and Rs. 2001 to Rs. 4000 Rs. 10000 consumers availing Rs. 4001 & above Rs. 10000 supply under Alternative Plus Rs. 3000 for Two Part Tariff under LT every Rs. 1000 or IIIB Part thereof of increse -- iii) The minimum current consumption deposit to be held or the quantum prescribed as per (ii) above whichever is higher is to be taken into account at the time of review.

iv) No change is proposed in the minimum rate of current consumption deposit (initial CCD) now in vogue as per B.P.(FB) No. 189 dt. 16.10.99

v) The payment of interest on current consumption deposit for all consumers both under H.T. and L.T shall be dispensed with, and no interest on current consumption deposit shll be paid form 1.10.2000 onwards.

vi) The first review of adequacy of current consumption deposit in respect of new services shall be done after 12 months from the month of service connection.

vii) Under the existing procedure, the next review of adequacy of current consumption deposit for L.T.services is due during April/May 2001 which is to be done during April/May 2001 and thereafter, the subsequent review shall be done once in five years. While reviewing adequacy of current consumption deposit during April/May 2001 and also for the subsequent review once in five years, the adequacy is to be calculated, based on the methods and rates indicated under item (ii) above.

(viii) As and when the adequacy of current consumption deposit is reviewed, the consumer may be informed of the amount available at credit in his account towards current consumption deposit.

The above said proceedings demonstrate that in order to streamlining the existing procedure and for review the current consumption deposit in respect of LT Service the impugned order has been issued. Apart from that as noted by the learned Single Judge it was proved that the Board was running with a heavy loss and it has to meet other services which have been given in the interest of public.

20. In view of the change in conditions of financial position, the Board has passed the impugned amendment as it had the jurisdiction to do the same.

21. Though there was a contention by the Electricity Board regarding maintainability of the writ petition by the petitioners-association, it was held by the Supreme Court in Akil Bharatiya Sushit Kaaranchari Sangh (Railways) represented by its Assistant General Secretary on behalf of the Association etc. v. Union of India and Ors. reported in AIR 1980 SC 298 giving reason for maintainability. In view of the above, the writ petition is held to be maintainable.

22. Section 79 of the Electricity Supply Act, 1948 reads as follows:

79. Power to make regulations- The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:

(a) the administration of the funds and other property of the Board, and the maintenance of its accounts;

(b) the summoning and holding of meetings of the Board, the time and places at which such meeting shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

(c) the duties of officers and other employees of the Board and their salaries, allowances and other conditions of service;

(d) all matters necessary or expedient for regulating the operations of the Board u/s 20;

(e) the making of advances to licensees by the Board u/s 23 and the manner of repayment of such advances;

(f) the making of contributions by the Board u/s 24;

(g) the procedure to be followed by the Board in inviting, considering and accepting tenders;

(h) principles governing the fixing of Grid Tariffs;

(i) principles governing the making of arrangements with licenses u/s 47;

(j) principles governing the supply of electricity by the Board to persons other than licensees u/s 49;

(jj) expending sum not included in statement submitted under Sub-section (1) of Section 61, under Sub-section (2) of Section 62;

(k) any other matter arising out of the Board''s functions under this Act for which it is necessary or expedient to make regulations:

Provided that the regulations under Clauses (a),(d) and (jj) shall be made only with the previous approval of the State Government and regulations under Clauses (h) and (i) shall be made with the concurrence of the Authority.

23. The learned Single Judge correctly held that the resolution of the board to amend the interests conditions was upheld to be valid by the Apex Court; that the Board has got powers to alter the terms and conditions; that the amendment is not arbitrary and that the amendment withdrawing the interest on consumer deposit are valid; that the denial of interest is warranted and that the Board has not acted against the judgement of Apex Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, .

24. A perusal of the terms and condition would reveal that there is no Clause in the terms and conditions that there should be a notice on the consumer when conditions are carried or altered or deleted. In the absence of any such clause, the petitioners cannot contend that they should be put on notice with regard to amendment before this Hon''ble Court.

25. As the Board has power and jurisdiction in Clause 36 of the terms and conditions, which is binding on the consumer/petitioners, there was no necessity for the Electricity Board to issue notice while deleting the interest clause.

26. The reasonings given by the learned Single Judge for dismissing the writ petitions cannot be set aside as they are confirmed and the Writ appeals are dismissed. However there will be no order as to costs.

