(2012) 12 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 31961, 31962, 31978, 31984, 32082, 32083, 32099, 32100, 32126, 32299, 32336, 34913, 34925, 34938, 34944, 35016, 35173, 35270, 35316, 35421, 36340 and 36353 of 2012

M/s. Jairaj Ispat Limited, Hyderabad and Others — APPELLANT

Vs

The Central Power Distribution Company of A.P. Ltd., Hyderabad and Others — RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Electricity Act, 2003 — Section 181, 185(2), 185(3), 47, 47(1)
Reserve Bank of India Act, 1934 — Section 49

Citation : (2013) 2 ALD 512 : (2013) 3 ALT 156

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : D.V. Nagarjuna Babu and Others, for the Appellant; O. Manohar Reddy for APCPDCL and Sri Srinivasa Rao Putluri for Electricity Regulatory Commission, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—As common questions of law are involved on similar set of facts, all these writ petitions are heard together and are being disposed of by this common order. For the purpose of disposal, I refer to the facts as arise in W.P. No. 31962 of 2012. The writ petition in W.P. No. 31962 of 2012 is filed seeking directions by way of Mandamus, to declare Letter No. SE/OP/RRRN/SAO/JAO-HT/D. No. 365, dated 22.06.2012, issued by the Superintending Engineer of Central Power Distribution Company of A.P. Limited, as illegal, with consequential declaration that; (1) the petitioner is entitled to interest at the rate of 9.5% per annum, with effect from 13.02.2012, on the security deposit lying with the respondents and (b) that the respondents shall pay interest at twice the rate specified in Clause 7(1) i.e. at the rate of 19% per annum with effect from 13.02.2012, till they actually pay the interest for the consumption years 2011-12 and 2012-13.

2. Petitioner is a Company having its industrial unit at Plot Nos. 8, 11B, 12C and 12D of IDA Phase-III, Jeedimetla, Hyderabad and is engaged in the business of manufacturing iron and steel products. For the purpose of running the Unit, the petitioner had obtained HT power supply from the erstwhile Andhra Pradesh State Electricity Board. Prior to the year 1998, the law relating to production and supply of electric power was principally governed by the provisions under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. The Andhra Pradesh State Electricity Board was constituted and it was looking after the generation, transmission and distribution of power. The State of Andhra Pradesh has enacted A.P. Electricity Reforms Act, 1998, separating the Companies with regard to generation and transmission and created Generation Company of A.P. Ltd. i.e. AP GENCO and the Transmission Company of A.P. Ltd. i.e. AP TRANSCO. Under the very Act, several other Companies are formed to look after the distribution of power and such Companies are the licencees under the Act. Thereafter, the A.P. Electricity Regulatory Commission (Security Deposit) Regulation, 2004 (Regulation No. 6 of 2004) was framed. As per the said regulation, all the consumers have to deposit the sum equivalent to two months consumption charges towards security deposit/consumption deposit. Such deposit is to be reviewed by the licencee from time to time. Clause 7 of the aforesaid Regulation reads as under:

7. Interest On Security Deposit Payable by the Licensee:

(1) The licensee shall pay interest on security deposit of a consumer, at the Bank Rate notified by Reserve Bank of India provided that the Commission may specify a higher rate of interest from time to time by notification in Official Gazette.

(2) The interest accruing to the credit of the consumer shall be adjusted annually against the amounts outstanding from the consumer to the Licensee as on 1st May of every year and the amounts becoming due from the consumer to the Licensee immediately thereafter.

(3) The Licensee shall duly show the amounts becoming due to the consumer towards interest on the security deposit in the bills raised on the consumer.

(4) The Licensee shall pay interest at twice the rate specified under sub-clause (1) above for the delay in making the adjustments for interest on security deposit.

3. On the deposit made by the petitioner, respondents were paying interest at the rate of 6% per annum, which was the bank rate of interest notified by the Reserve Bank of India. The Reserve Bank of India has revised the bank rate of interest with effect from 13th February 2012 from 6% to 9.5% per annum, in exercise of powers u/s 49 of the Reserve Bank of India Act, 1934. In view of revision of the bank rate of interest as notified by the Reserve Bank of India, the petitioner has made a representation dated 04.06.2012, for revising the rate of interest from the said notified date and to adjust such amount in the bills. A further letter dated 20th June 2012, was also addressed on similar lines, and in

response to the same, the 2nd respondent herein has issued the impugned letter dated 22.06.2012, in Letter No. SE/OP/RRRN/SAO/JAO-HT/D. No. 365, stating that the Andhra Pradesh Electricity Regulatory Commission has not approved the revised rate of interest as per Clause 7 of Regulation 6 of 2004. It is stated that as there is no approval for payment of interest at the rate of 9.5% by the Andhra Pradesh Electricity Regulatory Commission by way of notification in the official gazette, petitioner is not entitled for interest at the rate of 9.5% per annum as against 6% per annum on the consumption deposit.

4. In this writ petition, it is the case of the petitioner that in view of the revision of bank rate of interest by the Reserve Bank of India with effect from 13.02.2012, petitioner is entitled for interest at the rate of 9.5% per annum. It is stated that the interest accrued on security deposit is to be adjusted annually by the licencee as on 1st May of every year by reflecting the same in the monthly bills issued to the consumers. It is stated that in view of Regulation 7(4) of the Regulations, for delayed period, licencee shall pay interest at twice the rate specified under Clause (1) of Regulation 7, and that for payment of bank rate of interest, no approval is necessary from the Andhra Pradesh Electricity Regulatory Commission.

5. Separate counter affidavits are filed by respondents. In the counter affidavit filed by the Chief General Manager (Commercial), APCPDCL, while referring to the provision u/s 47(4) of the Electricity Act, 2003, it is stated that they are liable to pay interest equivalent to the bank rate or more as may be specified by the Electricity Regulatory Commission of the concerned State. It is stated that as required u/s 61 of the Electricity Act, 2003, annual returns were filed for the financial year 2012-13, and for the said year, the tariff proposals are submitted on 26.12.2011, and at that time, the interest rate notified by the Reserve Bank of India was only 6%, and accordingly, 6% interest has been proposed in the annual revenue requirements, by the DISCOMS, and the same was approved. It is stated that on the claim of petitioner for payment of interest at the rate of 9.5% per annum, the proposal would be submitted to the Regulatory Commission along with the annual revenue receipts to be filed for 2013-14. Placing reliance on the provision u/s 47(4) of the Act, it is stated that in the absence of any approval by the Electricity Regulatory Commission for payment of interest at the rate of 9.5% per annum, petitioner is not entitled for the same.

6. Counter affidavit is filed on behalf of the 4th respondent-Electricity Regulatory Commission in W.P. No. 31961 of 2012 and a Memo is filed, adopting the said counter affidavit in this writ petition also. In this counter, while referring to Regulation 6 of 2004, framed by the A.P. Electricity Regulatory Commission, it is stated that as the relief sought for in the writ petition is one for payment of interest on security deposit as per the Regulation, it is stated that the petitioner is entitled for interest notified by the Reserve Bank of India, if the same is not paid by the licencee. While stating that the relief sought by the petitioner is only against the licencees, prayed for dismissal of writ petition.

7. Heard learned counsel for petitioners, learned Standing Counsel Sri O. Manohar Reddy, appearing for APCPDCL, and also Sri Srinivasa Rao Putluri, learned Standing Counsel appearing for the Electricity Regulatory Commission.

8. The Electricity Act of 2003 is enacted by the Parliament, repealing the earlier enactments, namely, Indian Electricity Act, 1910, the Electricity (Supply) Act of 1948 and the Electricity Regulatory Commission Act of 1998. u/s 185(2) of the 2003 Act, notwithstanding such repeal of the above referred enactments and the rules framed under the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and the directions issued earlier which are not inconsistent with the provisions of the 2003 Act, are saved. u/s 185(3) of the Electricity Act, 2003, the provisions of the enactments specified in the schedule, not inconsistent with the provisions of the Act, shall apply to the States in which such enactments are applicable. The Andhra Pradesh Electricity Reform Act, 1998 is one of the Acts covered by the provision u/s 185(3) and finds place in the enactments mentioned in the schedule. The A.P. Electricity Regulatory Commission is a body constituted under the said Act. After the enactment of the Electricity Act of 2003, the State Regulatory Commissions are empowered to make regulations to carryout the provisions of the Act. Section 47 of the Electricity Act, 2003 deals with security deposits. Part VI of the Act contains the provisions with respect to distribution licencees. Section 47(1) of the Act empowers the distribution licencees to collect security deposit from the consumers. As per section 47(4) of the Act, distribution licencee shall pay interest equivalent to the bank rate or more as may be specified by the Electricity Regulatory Commission of the State, on the security deposit referred to in sub-section (1) and refund such deposit on the request of the consumer. The Andhra Pradesh Electricity Regulatory Commission (Security Deposit) Regulation, 2004 i.e. Regulation 6 of 2004 was framed by the A.P. Electricity Regulatory Commission, in exercise of powers conferred on it u/s 181 of the Electricity Act, 2003 read with subsections (1) and (4) of Section 47 of the said Act. As per Clause 7 of the said Regulation, the licencee shall pay interest on security deposit of consumer at the bank rate notified by the Reserve Bank of India, or more, provided the Commission specifies higher rate of interest from time to time by notification in the official gazette, and the interest accruing to the credit of the consumer shall be adjusted annually on 1st May of every year, against the amounts payable by the consumer to the licencee and the amounts becoming due from the consumer to the licencee immediately thereafter. It is also obligatory on the part of the licencee to show the amounts becoming due to the consumer towards interest on the security deposit, in the bills raised. It is also to be noticed that u/s 47(5) of the Electricity Act, 2003, the distribution licencee is not entitled to collect any security deposit as contemplated under sub-section (1) of Section 47 of the Act, if the consumer is prepared to take supply through pre-paid metre. The deposit which is contemplated u/s 47(1) of the Act is the amount belonging to the consumer, which lies with the licencee. It appears, such deposit is contemplated only to secure the interest of the licencee in the event of any default in payment of consumption bills by the consumer.

Having regard to the nature of such deposit, the very Act provides for payment of interest on such deposit at bank rate. A harmonious reading of Sections 47(1), 47(4) and 47(5) of the 2003 Act read with Clause 7 of Regulation 6 of 2004, makes it clear that the consumer is entitled for interest on the consumption deposit equivalent to the bank rate. As far as awarding bank rate of interest is concerned, it is automatic and whenever there is revision of bank rate of interest, consumers are entitled for such rate of interest as notified by the Reserve Bank of India. In the instant case, it is not in dispute that the Reserve Bank of India, in exercise of powers u/s 49 of the Reserve Bank of India Act, 1934, has issued notification on 13th February 2012, increasing the bank rate of interest from 6% to 9.5% per annum from the close of business on the aforesaid date. In view of the provisions referred above, this Court is of the view that there is no reason at all for not paying the increased rate of interest to the petitioner from the aforesaid date, on the consumption deposits. The plea of respondents that even for payment of bank rate of interest on the consumption deposits, the same is to be specified by the Regulatory Commission, cannot be accepted. So far as bank rate of interest is concerned, it is obligatory on the part of licencees to pay the same without any specification by the Regulatory Commission and the specification as contemplated u/s 47(4) of the Act applies only in cases where proposal is for payment of higher rate of interest than the bank rate. In such eventuality, unless there is approval from the Regulatory Commission, the licencee cannot pay higher rate of interest than the bank rate notified by the Reserve Bank of India. Even the plea of respondents that the annual revenues were already filed for the tariff year 2012-13 by calculating interest at the rate of 6% per annum on security deposits, is also no ground for not paying interest at 9.5%. As and when the rate of interest is revised, depositors are entitled to such higher rate of interest, and such payments/adjustments with higher rate of interest can be shown in the annual revenues for the subsequent years for fixation of tariff, but merely on the ground that the rate of interest was shown as 6%, as was existing at the time of submitting the tariff proposals by the licencees, the respondents cannot refuse to pay the revised bank rate of interest as notified by the Reserve Bank of India. Though the petitioners in this batch of writ petitions are also claiming interest at twice the rate for the delayed period, as much as the respondents have not paid the interest at the revised rate as notified by the Reserve Bank of India under the impression that the same is not approved by the Regulatory Commission constituted under the Andhra Pradesh Electricity Reform Act, 1998, this Court is of the view that it is not a fit case to order for payment of interest at twice the rate, as specified in Clause 7(1) of Regulation 6 of 2004.

9. For the aforesaid reasons, this Court is of the view that there is no reason or justification for the respondents, for not paying the revised rate of interest i.e. 9.5% per annum as notified by the Reserve Bank of India, from 14th February 2012, on the consumption deposits made by the petitioners. Accordingly, all these writ petitions are allowed in part, with a direction to the respondents to

pay interest on security deposits of petitioners/consumers at the rate of 9.5% per annum from 14.02.2012 onwards. However, it is made clear that it is open to the respondents to adjust such amounts in the consumption bills of petitioners/ consumers. No costs. As a sequel, all the miscellaneous petitions pending in this batch of writ petitions, shall stand closed.

