(1993) 08 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 34349 of 1992

M/s. Sri Radhakrishna Khandasari Sugar Mills — APPELLANT

Vs

The Karnataka Electricity Board and others — RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Electricity (Supply) Act, 1948 — Section 59

Citation : AIR 1994 Kar 204 : (1993) ILR (Kar) 2706 : (1993) 3 KarLJ 382

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : J.V. Hulsoor, for the Appellant; N.K. Gupta, for the Respondent

Judgement

1. The petitioner is the owner of the petitioner-Factory, who consumes electricity for its industrial activity. He is aggrieved by the claim made by the respondents for Rs. 91,985/- being the interest on belated payment of Additional Security Deposits, for the years 1989-90; 1991 and 1992. According to the petitioner, the consumer is not liable to pay any interest on the belated payment of Additional Security Deposits.

2. Regulation 31.02 framed by the Karnataka Electricity Board provides for the Additional Security Deposit (ASD for short). It says that:--

"After the installation is serviced, if the deposit held falls short of three times the highest bill amount during any single month during January to October of the calendar year, the difference shall become payable by the consumer as additional security deposit, within 30 days from the date of notice."

The note excludes certain amounts from consideration and it is unnecessary to be referred here. The security deposit and the ASD shall be payable as indicated in Regulation 31.03 partly by cash and partly by Bank Guarantee. There is no dispute about the validity of this Regulation. The respondents rely on Regulation 30.05 to sustain their claim for interest on belated payment of ASD.

3. Regulation 30.05 looks to be part of the main Regulation 30 with the Heading "Power Supply Charges" while Regulation 31 appears with the Heading "Security". Earlier Regulation 30.05 stated that :

"In case of belated payments, simple interest will be levied at the rate of 2% per month or part thereof from the expiry of due date as per clause 30.03 subject to a minimum of Re. 1/- for LT installations and Rs. 100/-for HT installations."

This was amended in January 1992. The Amended Regulation 30.05 has an independent Heading "Levy of Interest". Earlier there was no such heading. The relevant part of the Amendment reads as follows:--

"Levy of interest :

In case of any belated payment, simple interest will be levied at the rate of 2% per month or part thereof from the expiry of due date, subject to a minimum of Re. 1/- for L.T. installations and Rs. 100/- for H.T. installations."

The amendment has enlarged the scope of Regulation 30.05 while under the earlier Regulation 30.05 simple interest was levied in case of "belated payment", after the amendment the Regulation is attracted to any belated payment. Further, earlier the Regulation governed the subject matter referred in Regulation 30.05 pertaining to the Bill amount to be payable within 15 days. The present Regulation omitted any reference to Regulation 30.03. The liability for the interest arises from the expiry of ''due date''. Though Regulation 30.05 looks to be a part of Regulation 30 in reality it is an independent Regulation governing levy of interest on "any belated payment" as the amendment has made it clear. The position is made further clear by the addition of heading to the Regulation. In other words, the subject of ''Levy of Interest'' on ''any belated payment'' is now covered by Regulation 30.05. The object seems to safeguard the interest of the financial position of the Electricity Board, which has to supply electricity to the consumer at all times and thereafter has to collect the Bill towards the consumption charges. In other words, the investment of the Electricity Board would bear return only after the consumer pays the amount; until then the Electricity Board shall have to shoulder the burden of supplying the electricity and await the payment by the consumer in future. For this purpose the Electricity Board may have to some times even borrow the funds from elsewhere paying interest thereon. This burden is sought to be reduced by insisting upon the consumers to make security deposit and the additional deposit. The basis for the ASD is indicated in Regulation 31.02 itself. It is made proportionate to the enhanced consumption by a consumer. The ASD payable, based on the difference and computed in terms of Regulation 31.02 becomes payable within 30 days from the date of notice. The liability of the consumer to make the payment of ASD is within 30 days from the date of notice, and if there is a failure there will be a default on the part of the consumer. Having regard to the investment required of by the Electricity Board and to prevent the recurrence of default on the part of the consumers, the Regulation contemplates the levy of interest under Regulation 30.05. This cannot be considered as an unreasonable requirement to be prescribed under the Regulation.

4. Mr. Hulsoor, learned counsel for the petitioner contended that there is no relationship of ''Creditor'' and ''Debtor'' between the Board and the Consumer and therefore there cannot be any provision for payment of interest to the Board by the Consumer or payment of interest to the Consumer by the Board. The learned counsel relied on the decision of Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, The learned counsel referred to page 117 (of JT (SC) : (at pp. 2032-33 of AIR). There is a discussion as to whether interest is payable on security deposit or advance consumption deposit. But discussion was in the context of the demand made by the Consumers for payment of interest on the amount deposited by the consumers with the Board. The Supreme Court negatived this claim made on behalf of the consumers and upheld the relevant Regulations or Rules framed by different Electricity Board, wherein there was no liability on the part of the Board to pay the interest. It was held that the Interest Act was entirely inapplicable and in that context there was an observation that the deposit made by the Consumer cannot be equated to a fixed deposit. The Supreme Court observed thus (at p. 2034 of AIR):--

"The deposit made cannot be equated to a fixed deposit. It has already been seen that in the case of daily supply of electricity, there is a consequential liability to pay for each day''s consumption of electricity. To ensure that payment, the security deposit is furnished. Hence, it cannot be equated to a deposit at all. It is in the nature of a running current account."

Thereafter the Supreme Court also held that interest cannot be claimed either on equity or common law. In that context the Supreme Court observed that the object of deposit is to secure the payment of consumption charges; (Vide para-28); it was also held that the Board was not a Trustee. There is an observation that the said relationship between the Board and the consumer is like that of a depositor and depositee. Of course this observation is in the context of examining the question from the point of view of ''equity'' or a ''common law'', and not in the context of the Interest Act because the earlier observation was that the Security Deposit cannot be equated to a deposit at all. Mr. Hulsoor, relied on the observations found in para 129 to contend that the word ''interest'' would apply only to two cases where there is a relationship of ''Debtor'' and ''Creditor'' and in the instant case there is no such relationship at all.

5. This contention overlooks the effect of Regulation 31.02. Under this Regulation a liability arises whereunder the consumer is liable to make the payment of ASD within 30 days from the date of notice. Since this is a statutory liability, non-payment thereof certainly could be made a ground to compensate the Board either by way of penalty or interest. The minimum compensation that can be given in favour of the Board is by way of interest. What is why Regulation 30.05 was amended by enlarging its scope for payment of interest on ''any belated payment''.

6. Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, in Ferro Alloys Corpn. case, the Supreme Court pointed out that the consumption Security Deposit whether or not it carries interest is a condition precedent for the supply of electrical energy. If so, the consumer who availed of the benefit of consuming electricity, cannot make it a grievance that he can postpone the payment of ASD without any liability to compensate the Board. The rigour of the requirement of a proper security deposit is diluted so far as Regulation 31.02 is concerned, governing ASD. Instead of permitting the Board to insist on the payment immediately as a condition precedent for the supply of electric energy, the Regulation grants 30 days to the consumer to make the payment. Even if thereafter no payment Ss made by the consumer, he cannot seek any equitable treatment by denying any right in the Board to demand interest. In this regard the following observation of the Supreme Court at page 122 (para 141) (of JT (SC)) : (at p. 2036 (para 115) of AIR) is quite relevant:--

"The Board is obligated to adjust its tariffs for ensuring such surplus. The condition of supply requiring a consumption security deposit has a direct bearing on the operation of the Board which are to be conducted in such a manner as to ensure a surplus. The language in S. 59 of the Supply Act is "carry on its operations under the Act and adjust its tariffs. The language of the said section is not by adjusting tariff. Therefore, the argument that the only manner in which the Board can achieve a surplus is to adjust its tariffs does not flow from the language of S. 59. So read, in the context of the insistence of a security deposit which has direct bearing on the operations of the Board is per se reasonable and constitutional".

The availability of funds with the Board includes the funds generated by the deposits and ASD would have a direct bearing on the question while adjusting the tariffs.

7. Consequently it cannot be held that the demand for interest is unreasonable, and arbitrary.

8. The learned counsel then contended that there was no demand at all to pay ASD and straightway the impugned demand is based on the audit short claim. This contention overlooks the.very assertion made in the writ petition. In para 6 of the writ petition it is stated that the petitioner has deposited A. G. Audit short claim i.e., Additional Security Deposits within stipulated time as mentioned in the letter issued by respondents. In para 8, it is stated that the respondents haying granted the instalment for payment of security deposit and the petitioner having deposited the same in accordance with law, the respondents are stopped from charging the interest. Nowhere in the writ petition, the petitioner has given the date of the service of the notice. There is no specific assertion that notice under Regulation governing ASD was not issued to him. The assertion is that he has furnished the ASD, If there was no notice for paying ASD, there was no occasion for the petitioner to make the payment voluntarily. The very fact ASD was paid shows that there was a demand. The petitioner has not given the date of his

making the deposit. The nature of the averments in the writ petition as stated above is quite relevant to appreciate the records placed before me by Mr. Gupta, the learned counsel for K.E.B. The third respondent has written to the Secretary of the Board giving the dates on which various notices were issued to the petitioner. Three notices are referred regarding the respective years -- l) on 12-1-1989 for Rs. 1,32,280/-2) 9-7-1990 for Rs. 1,55,445/-; 3) 19-11-1991 for Rs. 1,22,145/-. The letter also gives the dates on which the petitioner paid the ASD such as 31-1-1992; 16-12-1991 and 22-1-1992 etc. There is no reason to disregard this statement of facts in the letter of 3rd respondent.

9. For the aforesaid reasons I do not find any merit in this writ petition. It is according- ly dismissed. No costs.

10. Petition dismissed.

