

(1998) 10 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil 2nd Appeal No's. 32, 87, 88, 89, 106, 107 and 108 of 1991

Rajasthan State Electricity Board

APPELLANT

Vs

Gopal Oil Mills and Others

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 1999 Raj 104 : (1999) 2 WLC 424

Hon'ble Judges : Arun Madan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Madan, J.—This judgment will dispose of the aforesaid seven second appeals as they involve common questions of law for consideration as urged by the learned counsel for the defendant-appellant.

2. In brief, the facts stated are that Rajasthan State Electricity Board (for short, "the Board") appellant-defendant issued notice to its consumers like the plaintiffs-respondents in these appeals stipulating therein that in view of the provisions contained in Clause 20(f) of the General Conditions of Supply and Clause (b) of Part II of the Schedule of Conditions of Supply, the security amount has been revised on the basis of average of three months' consumption of electricity supply for the year 1979-80 and thereby the plaintiffs were directed to deposit additional security by way of cash as well as bank guarantee for the amounts stated in the notice. Against the issuance of the aforesaid notice, the plaintiffs presented civil suits for declaration and permanent injunction. The suits were contested by the defendant-appellant- Board. On the basis of the pleadings the issues were framed and the evidence was led on behalf of both the Parties. The learned trial Court in all the civil suits of the plaintiffs-respondents relying upon the decision of this Court in Alpha Alloy Steels Pvt. Ltd. and etc. Vs. Rajasthan State Electricity Board and Another, issued declaratory injunction to the extent that the demand of security be made on the basis of average of twelve months

consumption of electricity supply to the consumers instead of three months" average and that the plaintiff's electricity supply connection be not disconnected on the basis of the impugned notice of the Rajasthan State Electricity Board (for short, "the Board") security amount on the basis of average of three months" consumption. Against the judgment and decree of the trial Court, the appellant-Board preferred appeal before the first appellate Court, which dismissed the same. Hence these second appeals.

3. In all these second appeals, this Court issued show cause notices to the respondents on the following substantial questions of law :

(1) Whether the appellant is competent under the law to demand security on the basis of maximum consumption of three months of the preceding year?

(2) Whether on account of retention of money by way of security the Board is liable to pay interest by way of compensation for the use of the money deposited by the consumer and if so at what rate? and

(3) Whether the appellant is competent to revise the security already deposited by the consumer under the provisions of Electricity (Supply) Act, 1948?

4. The learned counsel for the appellant-Board contended that though the questions: (1) whether the Board is liable to pay interest on cash security of one month, and (2) whether the Board could charge security cash as well as Bank guarantee on the basis of three months" maximum consumption of the previous year or on average consumption of previous year, were decided by this Court against the Board in Alpha Alloy Steels Pvt. Ltd. and etc. Vs. Rajasthan State Electricity Board and Another, but that decision of this Court was overruled by the Apex Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, According to the learned counsel for the appellant-Board, the controversy involved in these second appeals is well settled by the decision of the Apex Court in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, and in that view of the matter, these appeals deserve to be allowed.

5. I have heard the learned counsel for the appellant-Board. Neither the respondents-plaintiffs despite service of the notices on them nor their counsel have appeared. Since the controversy involved in these appeals stand resolved by the decision of the Apex Court in aforesaid case, these appeals are decided by this common judgment at the request of the learned counsel for the appellant-Board, who has appeared and argued these appeals.

6. I have considered the contentions of the learned counsel for the appellant-Board and the legal aspect of the controversy raised. In Alpha Alloy Steels Pvt. Ltd. and etc. Vs. Rajasthan State Electricity Board and Another, this Court held as under :--

(1) The consumers are entitled to interest on enhanced cash security deposits as admissible by Scheduled Banks on fixed deposits for a term of one year:

(2) Note "(ii) appended to Security Deposits in Part II of Schedule of Service and Misc. Charges attached to General Conditions which denies interest to depositors consumers, was held to be violative of Article 14 of the Constitution and thereby Note (ii), referred to above was struck down; and

(3) The criteria of the Board that the highest consumption of the previous year should be a yard-stick to enhance the security deposit would amount to giving a blanket power to the Board and that will cause great hardship to the consumers and three months' average of the previous year consumption should be adopted for enhancing the security deposit; in this view of the matter three months' criteria of highest consumption of the previous year adopted by the Board is arbitrary and irrational.

7. The decision of this Court (supra) was challenged by the Board before the Apex Court. In *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, the Apex Court allowed the Board's appeal preferred against the decision rendered by this Court in *Alpha Alloy Steels Pvt. Ltd. and etc. Vs. Rajasthan State Electricity Board and Another*, and reversed that decision by concluding that there is no liability on the Electricity Board either under the statute or common law or equity to pay interest; that the conditions and the terms of supply providing for no payment of interest is not so unconscionable as to shock the conscience of the Court; and that no reason need be given for enhancement of additional security deposit. At para 124 the Apex Court observed as under :--

"124. Thus, we hold that the Division Bench of the Rajasthan High Court erred in striking down Condition No. 20 of the General Conditions of the Rajasthan Electricity Board as violative of Article 14 of the Constitution of India."

8. The Apex Court, however, observed that in demanding security deposit it is open to the Court to take note of pilferage and in such circumstances, it can be said that the object of security deposit is to ensure proper payment of bills, and three months' security deposit required from high tension consumers cannot be characterised either unreasonable or arbitrary.

9. It is not in dispute that the learned trial Court decided the suits of the plaintiffs-respondents on the basis of the decision of this Court in *Alpha Alloy Steels Pvt. Ltd. and etc. Vs. Rajasthan State Electricity Board and Another*, which stands reversed by the decision of the Apex Court in *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, as contended by the learned counsel for the appellant-Board. Thus viewed from the ratio of decision of the Apex Court in *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, which is applicable to the present appeals. I am of the considered view that the appellant-Board is not liable to pay the interest on cash security deposit and that the appellant-Board is entitled to charge from consumer's advance security deposit for three months. In such circumstances, the impugned judgments and decrees passed by the learned trial Court affirmed by the learned first appellate

Court are patently illegal and contrary to law enunciated by the Apex Court in the case referred to above and therefore, are liable to be quashed and set aside.

10. In the result, these Second Appeal Nos. 88/91, 108/91, 107/91. 106/91, 32/94, 89/91 and 87/91 are allowed, and the impugned judgments and decrees of both the Courts below challenged in the aforesaid appeals are quashed and set aside. The Civil Suit Nos. 40/86. 277/89. 264/89. 275/ 89. 282/89. 243/89 and 235/89, are dismissed of. There would be no order as to costs throughout. The appellant-Board will be free to proceed further in the notices challenged by the plaintiffs-respondents in their respective suits, referred to above, in accordance with law.