

(2008) 04 MAD CK 0118

In the Madras High Court

Case No : Writ Appeal No's. 3075 to 3078 of 2003 and Writ Petition No's.
23574 and 33821 to 33823 of 2003 and 31842 and 31843 of 2004

Sri Krishna Alloys

APPELLANT

Vs

Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49, 49(2)

Citation : (2008) 5 MLJ 559

Hon'ble Judges : V. Periya Karupiah, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Sivanandam, for the Appellant; P.S. Raman, Additional Advocate General for S.N. Kirupanandam, for the Respondent

Final Decision : Dismissed

Judgement

V. Periya Karupiah, J.—The appellants are unsuccessful petitioners in the writ petitions, who had approached this Court for a direction to the respondents for issuance of a writ of certiorari and to quash the order of the 2nd respondent in his letter No: PR/A/CS.Br./AOR/HT/A2/BF.161/2003 dated 25.08.2003 in respect of levy and collection of surcharge for the belated payment. The appellants are having high tension power supply connection for their factories and were consuming electricity at the tariff of Rs. 150/- per K.V.A. and Government of India issued G.O. Ms. No: 95 Energy (A2) Department dated 28.11.2001 revising the tariff for the high tension industrial consumers from Rs. 150/- per KVA to Rs. 300/- per KVA and, therefore, many of the consumers including the petitioners / appellants challenged the said demand of revised tariff and this Court has also granted stay of the operation of the order and, therefore, the appellants did not pay the increased tariffs. Ultimately, those writ petitions were dismissed giving liberty to the appellants as also the other petitioners therein to seek suitable remedy before the Tamil Nadu Electricity Regulatory Commission, Chennai. The said revision petition filed by those petitioners including these appellants before

the said Commission came to be dismissed on 31.10.2002 and the appeal preferred against the said order were also dismissed. Thereafter, the amount payable by the petitioners including the appellants were paid by them in instalments. Since the petitioners paid the said amount belatedly, the impugned order came to be passed asking the petitioners, including the appellants, to pay interest by way of belated payment surcharge as per the rules. The appellants had questioned the said order in the writ petitions and a learned single Judge, after considering their case, had dismissed the writ petitions filed by them and, therefore, the appellants are before this Court in these appeals.

2. The writ petitions in W.P. Nos. 33821 to 33823 of 2003, 23574 of 2003, 31842 and 31843 of 2004 were filed by the petitioners for the similar relief of quashing the levy of interest at 18% per annum through the letters of the 2nd respondent and since the point in issue is one and the same, those writ petitions are clubbed with these writ appeals for disposal and is being disposed of by this common judgment.

3. For convenience sake, the appellants in the writ appeals and the petitioners in the writ petitions are commonly called as petitioners in this judgment. Learned Counsel for the petitioners Mr. S. Sivanandam would submit in his argument that the Rules governing the terms and conditions of payment of surcharge at 1.5% per month as per Clauses 20.02 and 20.03 were enacted pursuant to the power conferred u/s 49 of the Electricity (Supply) Act 1948 on the 3rd respondent and it was framed by the said 3rd respondent arbitrarily, unreasonably and is violative of Article 14 of the Constitution of India under the then and present socio economical circumstances. He would also bring it to the notice of this Court that interest rates in all trade and commerce banking from 2000 onwards are half of the interest prevailing in 1990's and the rate of surcharge at 18% per annum is arbitrary in nature. He had also submitted in his argument that the levy of such surcharge for belated payment from the year 2001-2002 to 2004-2005 are unreasonable. More over, he would submit that the rate of interest of current consumption was only 6% as fixed by the Tamil Nadu Electricity Regulatory Commission based on the Reserve Bank of India rate with effect from 10.12.2003. While so, the fixation of 18% per annum at Clause 20.02 is discriminatory in nature and has to be struck down. He had also pointed out that the legislation by Parliament namely the Electricity Act 2003, the interest rate fixed u/s 86 by the Tamil Nadu Electricity Commission alone will prevail and, therefore, the Clauses 20.02 and 20.03 of the terms and conditions have no application. He would further submit that even if Clauses 20.02 and 20.03 are found to have been sustainable, the claim at 18% per annum cannot be insisted from the petitioners. Learned Counsel would also submit that petitioners were granted 10 monthly equal instalments by a Division Bench of this Court and the 2nd respondent also agreed for such payment of the arrears of enhanced tariff amount in instalments and therefore, the 2nd respondent cannot levy belated payment surcharge on such payments. He would further submit in his argument that this Court, while passing the order of payment through instalments had

directed that it should be paid along with other routine current consumption bills promptly and therefore, the subsequent levy of belated payment surcharge would not arise. According to the learned Counsel the levy of such surcharge on belated payment would be amounting to something different from the order of the Division Bench of this Court especially when the petitioners have paid the said amount without any default. Learned Counsel for the petitioner would submit that the payment of enhanced tariff on instalments as ordered by the Court cannot be compared with the belated payments made by the consumers for some other reasons and petitioners were permitted to pay the said amount on instalments as per Class 20.01 of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board. He would also submit that the levy of surcharge through the impugned letter dated 25.08.2003 is violative of Class 20.05 read with class 19.14 of the terms and conditions of supply of energy wherein class 20.05 specifically prohibits the respondent from levying belated payment surcharge on the payment of instalment made by the petitioners as permitted by the 2nd respondent. He would further argue that the Division Bench of this Court did not order any surcharge on payment of instalments and, therefore, there is a bar on the 2nd respondent as per Clause 34 (2) of C.P.C. from claiming interest for the alleged belated payment. He had also submitted in his arguments that the levy of interest for the said belated payment is not legal when there was no default committed by the petitioners in making such payments.

4. Learned Counsel for the petitioners would submit an authority reported in *Kashyap Zip Ind. Vs. Union of India (UOI) and Others*, equivalent to 1993 (3) S.C.C. 493 [*Kashyap Zip Industries v. Union of India*]. Placing reliance on this pronouncement, learned Counsel would submit that the Hon"ble Supreme Court of India has reduced the rate of interest from 17.5% to 12% per annum for the belated payments caused due to the directions of the Court staying the payment till such time the writ petitions were pending. He had also drawn the attention of this Court to the judgment reported in *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, which is to the effect that the payment of interest for the payments to be made belatedly due to the stay order of the Court can be levied but the levy of interest at 18% per annum was excessive and it was reduced to 15% per annum. He had also submitted in his argument that since interest was not ordered by the Court while ordering payment to be made by instalments, the levy of interest even as per the terms and conditions are not sustainable and the finding of the learned single Judge that the levy of belated payment surcharge at 18% per annum (1.5% per month) need not be quashed is not sustainable and, therefore, the appeals may be allowed by passing suitable orders.

5. We have heard Mr. P.S. Raman, learned Additional Advocate General, appearing for the respondent Electricity Board. He would submit in his argument that the Superintending Engineer is empowered to extend the time for the payment with a levy of surcharge at 3% per month and the non payment of the

consumption charges even beyond the said period would attract 3% surcharge on belated payment and however, the consumers those who do not seek for extension of time but are paying the payments belatedly would get attracted with class 20.02 of the Terms and Conditions which prescribes only 1.5% towards surcharge. The learned Additional Advocate General would further submit that the terms and conditions of supply of electricity to the High Tension customers have been enacted by the 3rd respondent as per the powers conferred on it u/s 49 of the Electricity (Supply) Act 1948 and the payment of surcharge at 1.5% per month was also fixed for the purpose of avoiding the payments to be made by consumers in time without any delay. He would also submit in his arguments that the validity of Clauses 20.02, 20.03 and 20.05 were questioned before this Court in various writ petitions and a Division Bench of this Court had considered the validity of the terms and conditions, including the clauses therein, and had upheld the Clauses 20.02, 20.03 and 20.05 in a judgment reported in 2004 W.L.R. 307 (Sri Krishna Smelters (P) Ltd. v. The Chairman, Tamil Nadu Electricity Board and Anr.) and therefore, the petitioners cannot question the validity of those clauses once again as the said judgment will bind the petitioners as well and the consumers who have made belated payments are liable to pay the surcharge at 1.5%. He would further submit in his argument that the order of paying enhanced tariff by the Court did not prohibit any levy of interest as per the terms and conditions in force and the learned single Judge had correctly come to the conclusion of applying the principle laid down in Fenner (India) Ltd. Vs. Punjab and Sind Bank, , and to disallow the claim of the petitioners. He had also drawn the attention of the Court to the judgment reported in Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, and also the judgment reported in Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, and Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, . He had also drawn the attention of the Court to a judgment of the Andhra Pradesh High Court reported in Nava Bharat Ferro Alloys Limited and Raasi Cement Limited Vs. A.P. State Electricity Board and Others, in support of his case that it is a settled law that when a party apply and obtains a stay from the Court of law, it is always at its own risk and responsibility and mere passing of an order of stay cannot be presumed to be a conferment of any additional right upon the litigant public. Therefore, the learned Additional Advocate General would submit that the judgment of the learned single Judge is perfectly in accordance with law and, therefore, there is no necessity to interfere with the same. He would also add that the same ratio is applicable to the petitioners also and therefore the writ petitions are also liable to be dismissed along with the writ appeals.

6. We have given our anxious consideration to the arguments advanced on either side. The admitted facts are that the petitioners were having High Tension Electricity Power Connection for their respective factories and were consuming the High Tension electricity provided by the respondents. Petitioners have filed

writ petitions against the enhanced tariff for the High Tension Industrial Consumers issued through G.O. Ms. No: 95 Energy A2 Department dated 28.11.2001 and obtained stay of the said order, thereby they did not pay the enhanced tariff and continued to pay the old rate till the dismissal of the writ petitions filed by them. In the said writ petitions, the enhanced tariff was upheld and the Court had permitted the petitioners to pay the said amount in instalments and accordingly, they have paid the instalment without any default. The point for consideration in these appeals as well as in the writ petitions is as to whether Clauses 20.02 and 20.03 are unreasonable and whether the claim for surcharge at 1.5% per month on the belated payment is unreasonable, arbitrary and violative of Article 14 of the Constitution of India and hence, it has to be struck down or if so not whether it is sustainable ?

7. The questioned terms and conditions for the supply of electricity as per the rules framed by the 3rd respondent was derived from the powers conferred on it u/s 49 of the Electricity (Supply) Act. It is also not in dispute that the Board is entitled to take into account both the economy and efficiency of the organisation as contemplated u/s 49(2) of the said Act since the Board had kept all these statutory intendants in mind. It cannot be said that the said provision made by the Board u/s 49 of the Act for additional charges on delayed payment or on the outstanding dues are not in consonance with the extent of power granted to the Board. Neither can it be said that in making such provisions, the Board had outstepped its power delegated u/s 49 of the Act, nor can it be said that they are arbitrary, unreasonable and illegal. No enactment can be struck down by the Constitutional Courts just saying that in the opinion of the Court it is arbitrary and unreasonable, although non-arbitrariness, reasonableness and fairness are postulates of Article 14 of the Constitution. There must be some other constitutional infirmity before validating any enactment and it cannot be struck down merely because it is unjustified and unwise. Already this Court had come to a conclusion, after considering all these aspects, in a judgment reported in 2004 W.L.R. 307, cited supra, that the terms and conditions for supply of electricity as framed by the 3rd respondent under the powers conferred u/s 49 of the Electricity (Supply) Act is reasonable and justifiable and the clauses in the said rule namely Clause 19.05, 20.02 and 20.05 are with reasons and are sustainable. Therefore, the present claim of the petitioners that the rules governing the terms and conditions for the supply of electricity especially in Clauses 20.02 and 20.03 are not liable to be struck down in view of the earlier pronouncement of this Court. It is mentioned in Clause (b) of Section 49, 2 of the Act that to discourage delayed payments and to encourage prompt and timely payment of charges of electricity supplied by the Board, such charges are collected. Therefore, we are of the considered view that Clauses 20.02 and 20.03 of the terms and conditions for Electricity Supply are not liable to be struck down as they are valid in law.

8. The claim of the 2nd respondent was that the petitioners are liable to pay the amount demanded by him under the terms and conditions entered into between

the petitioners and the respondents and particularly Clause 20.02 entitles the respondents to claim 1.5% surcharge per month for the belated payment when admittedly they have not paid within 8 days from the date of the bill which was included in the monthly High Tension bills. There is no dispute that the belated payment on which the surcharge has been levied by the impugned letters of the 2nd respondent was due to the permission granted by the Court to pay it in monthly instalments along with the monthly current consumption charges. Similarly, it is also not in dispute that the High Tension power connection was given to the petitioners by the 2nd respondent as per the terms and conditions of the Tamil Nadu Electricity Board Rules. The relevant rule for the payment of surcharge is 20.02 of the terms and conditions. The instalments were also ordered by the Court and those instalments were promptly clubbed with the monthly High Tension bills payable by the petitioners and those payments were also made by the petitioners without any default. In these circumstances, we have to see whether the order of stay passed by the Court and the permission given by the Court to pay those amounts in instalments along with current consumption charges would warrant the imposition of surcharge as per Clause 20.02 of the terms and conditions.

9. In this context, we have to follow the dictum of our Supreme Court, The judgment of the Apex Court reported in *Fenner (India) Ltd. Vs. Punjab and Sind Bank*, would run as follows:

15. ...It is a settled principle of law that as and when a party applies and obtains a stay from the Court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party. This Court in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, held that the said portion of order by the Court means only that such order would not be operative from the date of its passing. The order would not mean that the order stayed had been whipped out from existence. The order of stay granted pending disposal of a case comes to an end with the dismissal of a substantive proceeding and it is the duty of the Court in such cases to put the parties in the same position they would have been but for the interim orders of the Court. Again in *Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others*, the Court held that the grant of stay had not the effect of relieving the litigants of their obligation to pay late payment with interest on the amount withheld by them when the writ petition was dismissed ultimately. Holding otherwise would be against the public policy and interest of justice. In *Kashyap Zip Ind. Vs. Union of India (UOI) and Others*, interest was awarded to the revenue for the duration of stay under the Court's order, since the petitioners therein were found to have the benefit of keeping back the payment of duty under orders of the Court.

Similarly, it is also found in the judgment of the Supreme Court reported in *Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board*,

Hyderabad and Others, that,

5. ...Surcharge was claimed for the period during which the appeals were pending in the Supreme Court since the Supreme Court did not stay the operation of the G.O. No: 187 but only restrained the Board from collecting the arrears. That no stay of G.O. No; 187 was ever intended to be granted by the Supreme court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charges at the enhanced rates. The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the writ petitions and writ appeals were pending in the High Court.

The judgment reported in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, is to the effect that,

Stay of operation of order or notification only means the order or notification which has been stayed would not be operative from the date of passing the stay order and it does not mean that the order or notification has been whipped out from existence. An order of stay granted pending disposal of a writ petition / suit are other proceeding, comes to an end with the dismissal of the substantive proceeding and it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court.

10. On a careful reading of the aforesaid decisions of the Supreme Court would go a long way to show that the interim order of stay passed by the Court, when the petitioners have questioned the revised tariff, would not in any way make the demand of the said revised tariff in-operative, as writ petitions were dismissed against the petitioners and the revised tariff was sustained by the Court. We could also see that the said outstanding arrears of electricity consumption charges on the basis of the revised tariff was also liable to be paid by the petitioners to the 2nd respondent and, therefore, those payments would also be considered as belated payment despite the fact that the Court had given permission to pay it through equal instalments along with the monthly bills of current consumption charges. Therefore, the question of payment of surcharge is not at all questionable by the petitioners.

11. Therefore, the petitioners are liable to pay the surcharge as contemplated in the terms and conditions especially Clause 20.02. The point for consideration is as to whether the said rate of surcharge can be reduced despite the terms and condition binds the petitioners to pay 1.5% per month on the belated payments. However, the arguments advanced by the learned Counsel for the appellants / petitioners in respect of the liability to pay surcharge as per the terms and conditions of the supply of electricity mentioned in class 20.02 has to be considered. For the said purpose, we have to extract the said clause, which is as follows:

20.02 All charges included in monthly High Tension bills are to be paid within

eight days from the date of the bill. Bills not paid by High Tension consumers within the time stipulated will be subject to a levy of surcharge at 1.5 per cent per mensem.

According to his arguments, there could not be any belated payment surcharge as long as the monthly payments of the bills along with the instalments as ordered by the Court were paid within 8 days from the date of bill claiming the monthly current consumption charges and if there was default in those payments only, the question of payment of surcharge would be attracted. The learned Additional Advocate General would reply that in the judgment of the Apex Court it had already mentioned the outstanding sum of revised tariff becoming due to the dismissal of the writ petitions would become belated payment though the said payment have been made by the petitioners along with the monthly bills. According to him, Clause 20.02 of the Terms and Conditions should be read along with the rule of law made by the Hon'ble Apex Court and accordingly, the petitioners are not entitled for any exemption from payment of surcharge for the belated payments caused due to the filing of the writ petitions and obtaining orders of stay.

12. For the said purpose, we have to go through the judgments passed by the Hon'ble Supreme Court of India reported in *Kashyap Zip Ind. Vs. Union of India (UOI) and Others*, , which is a decision by a Full Bench of the Supreme Court. Similarly, the judgment of the Supreme Court reported in *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, would also give a discretion of reducing the interest for the outstanding payments caused due to the stay order passed by the Court. The relevant paragraph (para No: 16) runs as follows:

16...We, however, feel that awarding of interest at the rate of 18% per annum from the aforesaid period was on the excessive side. The respondent authority could not be equated with private commercial institutions and conferred with an amount of compensation in the form of interest which, in the judicial parlance, may amount to penalty, despite the fact that the persons found to have jeopardised the process of law were rightly held liable to compensate the respondent authority by way of interest. In our opinion, 15% per annum interest for the aforesaid period would have been just and proper.

13. On a careful perusal of the judgment of the Apex Court, we are of the considered view that the outstanding payments made by the petitioners caused due to the stay order passed by this Court while they were questioning the revised tariff became payable on the disposal of those writ petitions and the Court had also granted permission to pay those outstanding payments by instalment along with the monthly electricity consumption bills and they were also paid by the petitioners promptly. But, however, those payments made by the petitioners are considered and declared as belated payment by various pronouncement of our Supreme Court as seen by us and, therefore, those payments warrant a surcharge for the belated payments. However, we find that Clause 20.02 of the Terms and Conditions would show that belated payment

would come only if there is default of any arrears of payment clubbed with monthly bills were failed to be paid within a period of 8 days. In these peculiar circumstances, Clause 20.02 cannot be strictly applied to the belated payment caused due to the stay order passed by the Court through the filing of the writ petitions questioning the enhancement of the tariff. However, following the decision of the Full Bench of the Apex Court reported in 1993 (3) S.C.C 493, cited supra, the interest rate fixed at 18% i.e. at 1.5% per mensem as per Clause 20.02 of the Terms and Conditions of the Electricity Supply can be reduced to some extent. It is also brought to our knowledge that the said rule claiming surcharge for the belated payment was reduced from 1.5% to 1% per mensem. Therefore, we feel that it is just to order that the said belated payment be directed to be paid along with surcharge at 1% per month, it would exactly be in accordance with the judgment of our Supreme Court reported in Kashyap Zip Ind. Vs. Union of India (UOI) and Others, . Therefore, we find no defect in the judgment of the learned single Judge except the quantum of interest at 18% per annum. Therefore, modifying the said interest rate from 18% per annum to 12% annum, the levy of surcharge is sustained. Accordingly, the writ appeals as also the writ petitions stands disposed of with the aforesaid modification in the rate of interest. Consequently, connected miscellaneous petitions are closed. No costs.