

(2003) 08 JH CK 0015
In the Jharkhand High Court
Case No : LPA No. 187 of 2003

Sri Tirupati Wires

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Electricity (Supply) Act, 1948 — Section 78A

Citation : (2003) 4 JCR 228

Hon'ble Judges : P.K. Balasubramanyan, C.J.;R.K. Merathia, J

Bench : Division Bench

Advocate : B. Poddar, Ajay Poddar and Darshana Poddar Mishra, for the Appellant; V.P. Singh and Mukesh Kumar for respondent JSEB, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The appellant is the petitioner in W.P. (C) No, 5785 of 2002 on the file of this Court. The petitioner filed that writ petition praying for the issue of a writ of mandamus directing the Jharkhand State Electricity Board to accept the deposit of security money in terms of Clause 15.3 of the 1993. Tariff in the shape of National Savings Certificate and not to insist on the deposit of security in cash as contemplated by Clause 15.3 (e) of the tariff. The learned Single Judge dismissed the writ petition and that dismissal is challenged in this appeal.

2. There is no dispute that under the 1993 Tariff governing the parties security in terms of cash for an amount equal to an estimated average consumption for three months or the minimum guaranteed consumption had to be paid by any consumer who sought a fresh connection for supply of electrical energy. But according to the appellant, that position is changed in view of the Jharkhand Industrial Policy, 2001 and Clause 15 thereof is relating to power. According to Clause 15.2.13, the State Electricity Board was to accept National Savings Certificates/Fixed Deposits against the security money. This amounted to a policy decision by the Government and once it was notified after the approval by the

Cabinet, it had primacy and it had to prevail over any other provision either in the Tariff or the agreement entered into by the consumer with the Electricity Board. This was met by the Electricity Board by contending that the Board had to act according to Tariff 1992 unless otherwise directed by the Government in exercise of power u/s 78A of the Electricity Supply Act, 1948. u/s 78A of the Act, the Board was to be guided by such directions on questions of policy as may be given to it by the State Government. On 13.8.2002, the State Government had issued a direction u/s 78A of the Supply Act and therein, there was no direction to go against the Tariff or to permit deposit of the security as contemplated by Clause 15 of the Tariff by way of National Savings Certificates or Fixed Deposits as envisaged by the Jharkhand Industrial Policy, 2001. There was a direction only regarding Earnest Money to be taken for tenders by way of National Savings Certificates or Fixed Deposits. There was a consequential notification dated 29.8.2000 by the Board for implementing the said notification dated 13.8.2002, issued u/s 78A of the Supply, Act, indicating the Government policy regarding the grant of benefits to a consumer. Therein also, there was no direction to accept National Saving Certificates or Fixed Deposit against the security money for the grant of electrical connections. The learned Single Judge therefore rejected the claim of the appellant and held that the security has to be furnished only by way of cash as indicated in the tariff. That decision is under challenge before us.

3. Learned counsel for the appellant, Sri Poddar submitted that the Industrial Policy and the notification of that Policy was based on a Cabinet decision and such decision was binding on all departments of the Government, including the State Electricity Board. Cabinet was supreme and that was the principle of Parliamentary democracy. He therefore submitted that once the Industrial Policy had been notified, the same had to be followed, and since the Industrial Policy clearly directed that the State Electricity Board should accept National Savings Certificates/ Fixed Deposits towards security, Clause 15 in the 1993 Tariff could not be invoked by the Board to insist on the security being deposited in terms of cash. In support of the contention that the industrial policy would prevail even over a notification in that behalf, the counsel placed strong reliance on *State of Bihar v. Suprabhat Steel Ltd.* 1999 11 SCC 31 and the decision of the Andhra Pradesh High Court in *Hotel Venus International Vs. State of Andhra Pradesh and Others*,

4. Possibly, in the light of the pronouncement in that behalf in *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, referred to above, the Industrial Policy, 2001 announced by the State of Jharkhand contained in a clause as Clause 37.1. The said clause read, "Notwithstanding anything contained in the foregoing paragraph of the Industrial Policy, the State Government by issuance of notification in the official Gazette may amend or withdraw any of the provisions and/or schemes mentioned herein above." In the light of this, once a notification is issued pursuant to the Industrial Policy, 2001, how far the Court would be justified in relying on the policy to enlarge the scope of the notification or to find it not enforceable is a different question. For the

purpose of this case, we do not think it necessary to go into that question. According to us, in view of the statutory scheme of the Electricity Supply Act, it is necessary for the State Government to Issue a direction on the Policy in terms of Section 78A of the Act. To go against a particular provision in the Tariff adopted by the Board may amount to a policy decision by the Government, but that decision may have to be given effect to by way of a direction u/s 78A of the Supply Act so as to enable the Board to implement the same or to compel the Board to implement the same. Here, after the notification of the Industrial Policy, 2001, specified directions had been given by the State Government to the Electricity Board on 13.6.2002 followed by the other on 29.8.2002 by Board relating to the grant of concessions for supply of power. By that direction, the State Government did not direct the Board to receive the security by way of National Savings Certificates or Fixed Deposit. On the other hand, in the matter of inviting tenders, it was directed that the security may be taken by way of a National Savings Certificates or Fixed Deposit. After all, the Industrial Policy relied on only generally states that the Electricity Board will accept National Savings Certificates/Fixed Deposits against the security money. It was open to the Government to clarify that position in terms of Clause 37 of the Industrial Policy itself and the direction Issued u/s 78A of the Supply Act subsequent to the Policy could well be understood as a clarification of Clause 15.2.13 of the Industrial Policy and even going by Clause 37.1 of the Industrial Policy, the said direction had to prevail.

5. An Industrial Policy and a provision therein regarding the duties of Electricity Board can only be considered to be a general direction in that regard. But the Act which created the Board, namely the Electricity (Supply) Act contained a specific provision in Section 78A thereof enabling the Government to issue directions in policy matter to be implemented by the Board. Section 78A must be understood to be a special provision relating to the supply of Electricity by the Statutory Board constituted by the Act itself. We are, therefore, inclined to think that the principle of *generalia specialibus non derogant* applies in the circumstance. It is, therefore, not possible to accept the contention of learned counsel for the appellant that the Board cannot on security by way of cash as provided in the Tariff.

6. Learned counsel for the Board submitted that the Board generally bills and collects the charges for the power consumed after the consumption takes place and it may take even more than a month some times, for realizing the charges and in that context, the Board has to have adequate funds for meeting the cost of generation, transmission and supply of electrical energy and this was provided by the security collected. This was sought to be met by learned counsel for the appellant who pointed out that there were serious allegation of the funds of the Board being frittered away and It was in that context possibly that the Government thought of at least securing the security fund by providing that it could be furnished by way of National Savings Certificates. In the view that we have taken as above, we do not think it necessary to go into this controversy.

7. In view of our conclusion as above, we are in respectful agreement with the view taken by the learned Single Judge. We therefore confirm the decision of the learned Single Judge and dismiss this appeal. We make no order as to costs. The appellant will have six weeks from today to deposit the balance one half of the security amount in cash.