

(1997) 03 MAD CK 0114
In the Madras High Court
Case No : W.A. No. 391 of 1991

Tamil Nadu Electricity Board and Another	APPELLANT
Vs	
Sumathi Process Industries (P) Ltd.	RESPONDENT

Date of Decision : 10-03-1997

Acts Referred:

Electricity (Supply) Act, 1948 — Section 25, 4, 49, 49(1), 49(3)

Citation : AIR 1998 Mad 120

Hon'ble Judges : V. Kanagaraj, J;D. Raju, J

Bench : Division Bench

Advocate : R. Thiagarajan, for the Appellant; N.S. Mukundan, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, J.—The above writ appeal has been filed against the order of a learned single Judge of this Court dated 10-12-1990 in W.P. No. 6624 of 1986, whereunder the learned Judge thought fit that the orders dated 29-6-1984 and 31-1-1986 passed by the Electricity Board are liable to be and also were actually quashed. The proceedings dated 29-6-1984 is the one wherein the Superintending Engineer, Ramnad Electricity System, Madurai, called upon the writ petitioner-respondent to make additional security deposit of Rs. 30,000/- within the 30 days from the date of receipt of the said communication purporting to act so on the basis of the proceedings of the Electricity Board in B.P. Ms. FS) No. 3 (Accounts Branch) dated 26-3-1984. Similarly, the proceedings dated 31-1-1986 is the one under which the Member/Distribution of the Tamil Nadu Electricity Board informed the writ petitioner with reference to his letter dated 24-8-1985 that the service remains disconnected from 1/85 onwards and monthly charges levied also remains unpaid and if the writ petitioner-respondent fails to resume supply on payment of arrears and the additional security deposit immediately, the lines would be dismantled without prejudice to the rights of the Board.

2. The sum and substance of the factual details are not in serious controversy,

except with reference to the correctness of some of the dates. It is seen from the materials placed before us that the writ petitioner-respondent was given H.T. supply for sanctioned demand of 500 KVA on 13-1-1982. At that time, as per the then existing rates of security deposit in respect of the class or category of consumers, the security deposit was fixed at Rs. 30,000- and collected from the writ petitioner. Subsequently, taking advantage of the Board's proceedings dated 26-3-1984 noticed supra, the impugned demand in respect of the additional security deposit of Rs. 30,000/- came to be made in accordance with the revised rates of security deposit within the time stipulated therefor. The writ petitioner, no doubt, was appraised of the fact that the non-payment of the additional security deposit would result in disconnection of the supply. The fact remains and it is not in controversy that the writ petitioner committed default in the payment of consumption charges for the month of November, 1984, which appears to have been actually remitted on 17-1-1985, though the writ petitioner would claim that such remittance was on 10-1-1985. The service connection was disconnected indisputably on 26-12-1984. Though the writ petitioner would contend that it was in the context of non-payment of additional security deposit, the Board would contend that it was not only for the non-payment of additional security deposit, but also for the non-payment of current consumption charges for the month of November, 1984. The further factual position which requires to be noticed is that the writ petitioner who availed the supply of electricity up to the date of disconnection on 26-12-1984, in the month of December, 1984 did not pay the bill for consumption charges for December, 1984 also and as a matter of fact, the consumption charges for the month of December came to be paid only on 16-12-1985. The inevitable consequence of the disconnection and the lapse on the part of the writ petitioner in getting the supply restored forthwith was the liability to pay monthly minimum charges. It is at this stage, the writ petitioner appears to have made representation to the Member, Electricity Board. The petitioner was, by the communication dated 31-1-1986 informed that if the payment of arrears and also additional security deposit was not effected immediately, and supply availed of, the lines will be dismantled. It may also be noticed at this stage that prior to the disconnection of supply on 26-12-1984, the Superintending Engineer also issued a communication dated 14-12-1984 inviting the attention of the writ petitioner to the default in the payment of the1 consumption charges for the month of November, 1984 as also the non-payment of the additional security deposit. Therefore, factually we have to proceed on the basis that the disconnection of the service effected on 26-12-1984 was not merely on account of non-payment of additional security deposit, but also with reference to the non-payment of consumption charges for the month of November, 1984.

3. It is in the context of such events that the respondent-writ petitioner filed W.P. No. 6024 of 1984 seeking for a writ of certiorarified mandamus to quash the proceedings dated 29-6-1984 and 31-1-1986 and consequently, forbear the respondents from demanding or receiving additional security deposit in respect

of HT service connection No. 67 (old No. 118) of the Ramanathapuram (West Electricity System). The writ petitioner contended that the Electricity Board had no authority or power to call upon the writ petitioner to make additional security deposit of Rs. 30,000/- and that the Board's proceedings dated 26-3-1984 could not be either relied upon or applied against the writ petitioner, the same, according to the writ petitioner, being applicable only prospectively. The further challenge to the proceedings initiated against the writ petitioner was that the writ petitioner having cleared the consumption charges arrears for the month of November, 1984 and inasmuch as the disconnection, according to the writ petitioner, was effected only on account of non-payment of the additional security deposit, the disconnection of supply thus being on an unlawful ground and wholly unjustified and therefore, the writ petitioner having been denied supply of energy wrongfully by the Board, there was no question of saddling the writ petitioner with the responsibility or liability for the minimum monthly charges. Percontra, the Electricity Board reiterated that the demand for the additional security deposit was well within its powers and it was statutorily fortified in making such a claim, that the disconnection was not only for nonpayment of additional security deposit but also for non-payment of consumption charges for November, 1984 and though the consumption charges for November, 1984 had been cleared on 17-1-1985, the default committed persisted even thereafter in the form of non-payment of consumption charges for December, 1984, which came to be paid only on 16-12-1985 and therefore, the withdrawal of supply or non-supply of electrical energy to the writ petitioner was not only on the ground of non-payment of additional security deposit but also for the nonpayment of consumption charges and therefore, the writ petitioner was liable to pay minimum consumption charges guaranteed to the Board under the terms and conditions of supply as also the statutory requirement. Even otherwise, the stand taken for the respondents was that since the demand for the additional security deposit was valid in law, the non-payment of the said amount would also constitute sufficient ground for disconnecting the supply and if the writ petitioner committed default in clearing the same and get restored the supply, still the liability to pay the minimum charges guaranteed subsisted. Consequently, according to the Board the challenge made to the proceedings is not well merited.

4. On a consideration of the respective contentions of the parties on either side, the learned single Judge was of the view that the proceedings of the Board dated 26-3-1984 would have relevance and application only to prospective consumers only, namely, anyone, who has been given supply on and after the date of the proceedings dated 26-3-1984 and cannot be relied upon against the existing consumers like the respondent-writ petitioner, who has been given service connection even as early as on 13-1-1982. On the said finding of the learned single Judge, the ultimate conclusion that was arrived at was that the disconnection was wrong and erroneous in law and consequently, the respondent-writ petitioner cannot be saddled with the liability for minimum charges also. It is

on that view, the learned single Judge allowed the writ petition and quashed both the communications.

5. Aggrieved, the Electricity Board has come up in appeal. Mr. R. Thiagarajan, learned Senior Counsel appearing for the Board contended that the proceedings of the Board dated 26-3-1984 applied to all consumers, who proposed to avail of the supply on and after the date irrespective of the fact whether they are already existing consumers having been given initially supply prior to the date of Board proceedings or consumers to be granted with connection for supply of electricity for the first time thereafter. That apart, the learned Senior Counsel has also submitted that the decision of the Board can be the sufficient basis for making the demand for additional security deposit in terms of not only Sections 49 and 79(j) of the Electricity (Supply) Act, 1948, but also the terms and conditions of supply which are found stipulated in the agreement executed by the consumer, which entitled the Electricity Board to unilaterally, from time to time alter and vary even the terms and conditions of supply of electricity and consequently, no exception could be taken to the demand made for the deposit of additional security. Argued the learned Senior Counsel further that even after the initial default in the payment of the consumption charges for November, 1984, there was further default in the payment of consumption charges for December, 1984, which default came to be rectified by payment of those arrears only on 16-12-1985, and therefore, the Board is entitled to insist upon the payment of monthly minimum charges also and the learned Judge was in error in sustaining the claims of the writ petitioner.

6. Per contra, Mr. N.S. Mukundan, learned Counsel appearing for the respondent-writ petitioner while adopting and reiterating the reasons assigned by the learned single Judge, contended forcefully that the disconnection could not be said to have been effected on account of the arrears in consumption charges, but the same was effected only on the basis of non-payment of the additional security deposit and that inasmuch as the demand for payment of additional security deposit was illegal and unsustainable and without the authority of law, the writ petitioner could not be found fault with and held responsible for not availing the supply. Learned Counsel for the writ petitioner placed strong reliance upon the words used in the Board's proceedings dated 26-3-1984 in the preamble portion that the payment of security deposit contemplated wherein concerned "prospective H and LT consumers be collected" and therefore, the learned single Judge was right in his view that its relevance and application are only to prospective consumers, who will be given service connection for the first time only after the date of the said proceedings, but not to those consumers, who are already availing supply prior to the said date of the Board's proceedings.

7. We have carefully considered the submission of the learned Counsel on either side. Before advertng to the contentions based on the circular of the Board and the demand raised on the basis of such circular, it would be appropriate to advert to the rights of parties, namely that of the Electricity Board and the consumer,

writ petitioner and the duties and obligations cast upon such consumer who availed or purports to avail to supply in the matter of effective payments as also the relevant conditions and terms of such supply which must be conformed to for the continuous supply of electrical energy. Reliance has been placed by the learned Senior Counsel appearing for the appellant on the decision of the Apex Court in *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, wherein the Court after referring to Section 49 of the Electricity (Supply) Act, 1948 (hereinafter referred to as "the Act"), observed in paragraph 5 as follows:

Sub-section (3) empowers the Board to enter into a special agreement with any consumer and prescribe different tariffs for him. u/s 4, an obligation is cast on the Board not to show undue preference to any person while fixing the tariff and terms and conditions for the supply of electricity. In all these cases, the appellants are covered by the general terms and conditions notified u/s 49(1) of the Act. The terms and conditions were notified by the Board and the B.P.M.S. No. 690, dated September 17, 1975. It is not necessary to refer in detail to the various terms and conditions. However, what requires to be noticed is- the terms and conditions oblige every consumer executing an agreement in the prescribed form, undertaking to abide by the terms and conditions prevailing on the date of agreement and also agreed to be bound by the terms and conditions as may be notified from time to time. It is important to note u/s 25, the Board has unilateral right to vary from time to time under Clause 25.1 the terms and conditions for supply of electricity by special or general proceedings.

In paragraph 160 of the very judgment, the Apex Court held as hereunder:

In conclusion, we hold:

- (1) Section 49 of the Supply Act is valid.
- (2) The nature of consumption deposit is to secure prompt payment and is intended for appropriation.
- (3) There is no liability on the Electricity Board either under the statute or common law or equity to pay interest.
- (4) Conditions and the terms of supply providing for non-payment of interest is not so unconscionable as to shock the conscience of the Court.
- (5) No reason need be given for enhancement of additional security deposit.

Emphasis has been made for the appellant on the conclusion No. 5, wherein it has been held that no reason need be given for enhancement of additional security deposit. It may also be stated at this stage that the supply of electricity in this state also is governed by the terms and conditions of supply of electricity stipulated in exercise of the powers u/s 49 of the Act and it is common knowledge that such terms and conditions of supply of electricity are being periodically revised making them applicable to all consumers, whether existing or the consumers, who come to avail of the supply in future or prospectively and it

would be impracticable to have different conditions in respect of different consumers merely on the basis of date of supply of energy or giving service connection. As a matter of fact, the agreement dated 15-9-1980 entered into between the parties, the type of which is the normal one got executed by any consumer with the Board before availing of supply, provides as hereunder:

4. The consumer hereby undertakes to comply with all the requirements of the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and of any amendments for modifications or re-enactment thereof or of any other enactment to be passed in relation to supply made under this agreement from time to time and the rules, regulations (sic) orders etc., made thereunder from time to time, provisions of the Tariffs, Scale or miscellaneous and other charges and the terms and conditions of supply prescribed by the Board from time to time, and the consumer hereby agrees not to dispute their applicability to this agreement.

6. From the date this agreement comes into force, the consumer shall be bound by and shall pay the Board, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the Tariffs applicable and the terms and conditions of supply notified by the Board from time to time for the appropriate class of consumers to which it belongs.

7. The consumer agrees that the Board shall have the right to vary, from time to time, tariffs, general, and miscellaneous charges and the terms and conditions of supply under this agreement by special or general proceedings. The consumer, in particular, agrees that the Board shall have the right to enhance the rates etc., chargeable for supply of electricity according to exigencies. It is also open to the Board to restrict or impose power cuts totally or partially at any, time as it deems fit.

8. The consumer agrees to pay minimum charges every month as prescribed in the tariffs, and terms and conditions of supply even if no electricity is consumed for any reason whatsoever, and also if the charges for electricity actually consumed are less than the minimum charges. The minimum shall be payable even if electricity is not consumed because of disconnection of supply by the Board due to .non-payment of electricity charges, pilferage or other malpractices or for any other valid reason.

10. In consideration of the Board making arrangement for supplying electrical energy, the consumer agrees to guarantee to the Board with. effect from the date of utilisation of electrical supply or from the date of expiry of the three months" notice regarding the availability of electrical supply mentioned in Clause 2, a minimum payment of Rs. 16,700/- (Rupees Sixteen Thousand Seven Hundred only) every year towards demand and energy charges exclusive of payment towards meter rent or other payments by whatever name they may be called. If the amounts actually paid towards demand and energy charges during any year fall short of the guaranteed minimum, the amount of deficit shall be

deemed to be an arrear of electricity charges and recovered accordingly. This is without prejudice to the tariff minimum specified under the tariffs.

The above clauses will also go to show that the terms and conditions of supply would include any amendment, notifications etc. made from time to time. Having regard to the above said position and the principles laid down by the Apex Court in the decision, referred to supra, though the Electricity Board had a right to unilaterally alter from time to time the conditions of supply also, the challenge made to the power of the Electricity Board to demand for the remittance of additional security deposit in a further sum of Rs. 30,000/- cannot be said to be without the authority of law. The writ petitioner having agreed to abide by the conditions and terms of supply not only in existence and force as on the date of the initial sanction of supply, but also subject to the terms and conditions as modified, amended or varied thereafter, cannot turn round and contend to the contrary by challenging the authority of the Board. The writ petitioner like every other consumer is bound to comply with the terms and conditions of supply not only as were in existence at the time of initial ground of supply to him but also as are in force from time to time, as long as he is availing and propose to avail of the supply.

8. If the contentions of the parties are to be considered in the light of the above settled provision of law and as principles declared by the Apex Court, there need be no specific or special reason for the demand of additional security deposit, except perhaps that such deposits are uniformly demanded from every one of the consumers similarly placed. There can be no effective reason for the writ petitioner to deny payment of additional security deposit. Consequently, the demand for the additional security deposit made in this case must be held to be well within the power and authority of the Electricity Board. The proceedings of the Board dated 26-3-1984 is relied upon by the Board more as a justification for the demand of additional security deposit rather than as the source of power or authority to make such demand and insist on the payment of such additional security deposit. That right to demand inheres in the Board by virtue of Section 49(1) and 79(g) of the Act, the statutory terms and conditions notified in B.P.Ms. (FB) No. 61, Adm. Br. dated 24-12-1988 u/s 49 of Central Act 54 of 1948 as also the terms of the agreement dated 15-9-1980 entered into between parties.

9. Even that apart, we are of the view that undue emphasis cannot be made on the words used that the resolution of the Board which culminated in the proceedings dated 26-3-1984 was for laying down the standards of or the rights of initial security deposit from prospective HT/LT consumers. The word "prospective" used therein has to be considered in the context of the preceding words "initial security deposit". If the revised rates are the rates for the initial security deposit for prospective HT/LT consumers, it is beyond reason as to why the Board cannot avail of it to revise the rates for the persons who have already availed of the supply also by way of additional security deposit availing of its powers under the Act as also the clause contained in the agreement, to which a

reference has already been made. Consequently, we see no error of law in the demand made by the Board upon the writ petitioner for the payment of additional security deposit.

10. If the demand made for the additional security deposit was well within the powers of the Board, it goes without saying that the noncompliance of the same constitutes default and the disconnection thereafter also is a legal one. Even that apart, as we have noticed while narrating the facts, the writ petitioner committed default initially in the payment of consumption charges for November, 1984 and thereafter of the consumption charges for December, 1984 and such default persisted till December, 1985. Viewed thus, the default in availing of the supply by complying with the conditions both by paying the additional security deposit as also clearing the arrears, as noticed supra, squarely lays with the writ petitioner-consumer and consequently, the Board is entitled to insist upon the payment of the minimum guaranteed charges for the reason that the non-supply could not be attributed to any fault or error on the part of the Board. Consequently, the respondent-consumer cannot wriggle out of its liability to secure the payment of guaranteed minimum charges, as undertaken by it under the terms and conditions of supply.

11. For all the reasons stated above, we are unable to agree with the view taken by the learned single Judge and the order of the learned single Judge is liable to be, and is hereby set aside. The writ petition shall, therefore, stand dismissed. There will be no order as to costs.

12. Mr. R. Thiagarajan, learned Senior Counsel appearing for the appellant-Board, pointed out that for the default committed in the remittance of minimum charges, the Board is entitled to also levy and recover belated payment surcharge. We are not concerned with all those aspects in this writ Appeal, it is for the Board to work its remedies as are permissible and as provided for in the terms and conditions of supply and also in the provisions of the Act.