(1986) 01 KAR CK 0059

In the Karnataka High Court

Case No : Writ Appeal No''s. 2448, 2449 and 2649 to 2651 of 1982

The Chairman, Karnataka Electricity Board and Others — APPELLANT

Vs

Gadag Mining Co. and Others etc. — RESPONDENT

Date of Decision : 10-01-1986

Acts Referred:

Electricity (Supply) Act, 1948 — Section 24, 49
Electricity Supply Regulations — Regulation 55, 55B (2)

Citation : AIR 1986 Kar 252 : (1986) ILR (Kar) 503

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Bench : Division Bench

Advocate : V.N. Sathyanarayana and M. Jaya Mahadeva Prasad, for the Appellant; Padmanabha Mahle, for the Respondent

Judgement

Rama Jois, J.—These 5 Writ Appeals by the Karnataka State Electricity Board are against the order in W. P. Nos. 14734/1979 and connected petitions of the learned single Judge holding that the regulations of the Board requiring the consumers to make a security deposit of an amount equal to 3 months estimated power consumption charges or 3 months average bill whichever is higher (hereinafter referred to as the deposit) with the Board as invalid and issuing a direction to the Board not to collect an amount in excess of two months estimated power consumption charges or two months average bill whichever is higher, from the consumers and to refund if already collected.

2. The facts of the case have been fully set out in the order of the single Judge. We consider that it is unnecessary to repeat all those facts. In the Writ Petitions, ''the respondents challenged the validity of Regulation 55 of the Electricity Supply Regulations framed under The Electricity (Supply) Act, 1948 (the Act for short) which required the consumers to make the deposit as also a clause therein which provided that no interest shall be paid on the deposit made by the consumers. The three questions were formulated by the learned single Judge, which read

(i) Whether the Board is, in law, entitled to demand security deposit for supply of electrical energy?

(ii) Whether the demand for additional security deposit subject to a maximum of 3 months estimated power consumption charge or 3 months average bill whichever is higher, is reasonable and is justified in law?

(iii) Whether the Board is justified in law in keeping the security deposit without paying

interest thereon, while at the same time collecting interest on delayed payment of, electrical energy charges?

3. The first question was answered in the affirmative i.e., against the Writ Petitioners (respondents in the appeal) holding that in view of the language of S. 49 it was competent for the Board to lay down conditions through regulations for the supply of Electric Energy and power to lay down conditions including the power to demand a security deposit from consumers as a condition for supply of Electric Energy. This question is also concluded by the decision of the Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, .

4. As regards the second question, the learned Judge held that the provision requiring a deposit of 3 months estimated power exemption charge or 3 months average bill whichever is higher was unreasonable and! collection of deposit of an amount equal to two months consumption charge or two months average charge whichever is higher was reasonable. Accordingly, the Writ, was issued. The correctness of the view as above is challenged by the Board in these appeals.

5. It is seen from the order of the learned single Judge, he took the view as according to regulations 15 days time was allowed for payment of the bill from the date of the presentation of the bill, the consumer would be consuming electric energy without payment of charges for about 2 months and therefore, it was reasonable for the Board to insist on a deposit equivalent to 2 months 4 charges payable by consumers but beyond that it was unreasonable.

6. Learned Counsel for the appellant submitted that having regard to the provisions of the regulations and the time occupied for preparing the bills, it would be more than two months, by the time the Board would be able to recover the charges for the electric energy consumed by the consumers during a month, from the consumers and therefore, the view taken to the effect that regulation requiring a consumer to deposit an amount equal to 3 months charges payable by him was unreasonable was not justified. Learned Counsel invited our attention to the provisions of the Regulations and also the provisions of the Act.

7. Regulation 27 provides for reading of meters. The reading of the meters, can take place after the end of the concerned month and having regard to the large number of consumers, it would take some time for the employees of the Board to complete the meter reading. In the case of domestic consumers, the learned

Counsel said that the bill could, be prepared then and there but in respect of, non-domestic consumers, on the basis of the figures of the meter reading, the office has to prepare the bill and send the same to the consumers and it would also occur some time. Regulation 35 requires to pay the bill within 15 days from the date or receipt of the bills. There is also a provision to pay the bills by cheques. Whenever, payment is made by cheques some time is occupied in encashing the cheques. Further, after noticing that a particular consumer has not paid the bill within 15 days, after the presentation of the bill, which itself occupies some time, S. 24 of the Electricity Act, 1910 provides that clear seven days notice shall be given to the consumer before effecting disconnection and the issuing of such notice also would naturally take some time. It appears to us, it would be reasonable to take a view that it will take 15 days to prepare the bill after the end of the particular month and send it on, to -the consumer and consumers will have 15 days to pay the bill and whenever the bills are paid in cheques, it may take a week for realization of the cheques and in the case of default as the Board is required to give 7 clear days'' notice it will take 2 1/2 months or a little more before the Board could realise the amount due from such consumers and in the meanwhile, the consumers will be consuming electric energy without making payment.

8. Having regard to these facts and circumstances, it appears to us that it is difficult to say that requirement to deposit 3 months charges is unreasonable. It is seen from the Judgment of the Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, , that the Andhra Pradesh High Court had held that security of an amount equal to 3 months consumption charges was reasonable, and the Supreme Court accepted the correctness of the view of the Honorable High Court. A similar question arose in the appeals presented by the Bangalore Water Supply & Sewerage Board v. Ramakrishna Aithal in Writ Appeal Nos. 139 to 164/1984 decided by a Division Bench of this Court on 7-11-1985. In the said case, on consideration of the ratio of the judgment of the Supreme Court in Jagadamba Paper Industries (P) Ltd., the Division Bench of this Court held that requirement to deposit 3 months charges was reasonable. In the said case, in respect of domestic consumers of water, Bangalore Water Supply & Sewerage Board required by regulation to deposit 3 months'' charges as deposit. In respect of non-domestic consumers, the regulation, required them to deposit an amount equal to six months'' charges. The regulation to the extent it demanded more than 3 months charges as deposit from non-domestic consumers was held, invalid. But the requirement to deposit an amount equal to 3 months charges was held reasonable and valid. The ratio of the said judgment applies with equal force to this case also. For these reasons, we answer question No. 2 in the affirmative and in favour of the Board.

9. As far as question No. 3 is concerned, the learned Judge held at para 5 of the order make regulations providing for payment of interest to the consumers. However, no relief was granted on that aspect of that matter. Regulation 55B(2)

reads thus:

"No interest is payable on the deposit made by the consumer".

10. Regulation 35(d) reads :

"The Board will levy interest at one and a quarter per cent per month (fifteen per cent per annum) or part. thereof, from the due date on all belated payments of bills (including meter hire) subject to a minimum interest of Rs. 1/- in case of L. T. Consumers and Rs. 5/in the case of H. T. Consumers".

11. It appears that the regulation 35 (d) has been amended and instead of interest of 1% per month, it is made 2%. Whatever that may be, the fact remains the Board is charging interest on the amount payable by the consumers. Therefore, when the Board is requiring the consumers to make the deposit, any regulation which provided that no interest be paid by the Board to the consumer is on the face of it unreasonable. In fact this question was also considered by the Division Bench in the case of B.W.S.S.B. Vs. Ramakrishna Aithal, referred to earlier. The relevant portion of the judgment in paras 17 to 19 there under

"The next question for consideration is the submission made by the learned counsel for the petitioners that in the event of the Court accepting the plea of the Board that the deposit required under Regulation 7A is in the nature of security deposit for ensuring payment in the light of the judgment of the Supreme Court in the case of Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, , in view of the same judgment this Court should direct the Board to pay interest on the amount so deposited by the consumers. In support of the submission, learned Counsel relied on paragraph 11 of the judgment, of the Supreme Court in Jagadamba Paper Industries'' case It reads

"11. On the security amount interest at the rate of 4% was initially payable. The same has already been enhanced to 8% per annum. Since the amount is held as security, we indicated to the counsel for the Board that -security amount should bear the same interest as, admissible on fixed deposits of Scheduled, Banks for a term of years and we suggested keeping the present rate of interest in view that it should be enhanced at 10%. Board''s counsel has now agreed that steps would be taken to enhance the present rate of interest of 8% to 10% with effect from October 1, 1983".

There is force in the submission. Once the amount which is required to be deposited by the consumers with the Board under the impugned regulation is in the nature of security deposit, the Board must pay interest for the amount held in deposit. In fact as can be seen from the bills produced as annexure along with the petitions, there is a provision for collecting interest at 12% per annum from the consumers if there is delay on the part of the consumers in paying the bills after the due date. When the Board -requires the consumers to pay interest if they make delay in paying the water charges which is due to the Board, the

Board cannot avoid payment of interest to the consumers when it requires the consumers to make a deposit of an amount equal to three months average charges.

Learned counsel for the Board, however, submitted that it was impracticable for the Board to calculate and pay interest to the consumers as there were about 1,69,000 domestic consumers and out of them only 7,000 were consuming more than 10000 liters of water per month and would be paying substantial amount as deposit and further there would be enormous labour involved in calculating interest, if this Court were to direct the Board to pay interest to all the consumers who are required to make deposit under Regulation 7A, and the amount of interest an individual gets is too small.

It is seen from the judgment of the Andhra Pradesh High Court in Kistna Cement Works, Tadepalli Vs. The Secretary, APSEB, Vidyut Soudha, Hyderabad and Others, , that in the Regulations made long ago, the Andhra Electricity Board had made provision for payment of interest only in respect of deposits of Rs. 25/- or more. Having regard to the present value of the rupee, we consider that it would be reasonable to require the Board to pay interest only to such consumers who would be required to make a deposit of Rs. 100/- or more and that such interest should be calculated once in a year and it shall either be paid to the consumers or adjusted towards the amount due from them to the Board under the monthly bill. As far as rate of interest is concerned, the Supreme Court in the case of Jagadamba Paper Industries, has considered that the requirement to pay interest at the rate of 10 per cent per annum, would be reasonable. Therefore, we also direct that the interest shall be paid at the rate of 10 per cent per annum on the deposits".

12. In this case also for the same reason we hold that the Board should pay interest at the rate of.10% per annum on the amount deposited in cash by the consumers under Regulation 55. and payment of such interest should be restricted to those who have to deposit a sum of Rs. 100/- or more for the reasons given in the aforesaid judgment of the Division Bench.

In the result we make the following:

O R D E R

(i) The appeals are allowed.

(ii) In reversal of the order of the learned single Judge, the Writ Petitions in so far as they relate to the challenge of the validity of Regulation 55 of the Regulations requiring the consumers to make a deposit of an amount equal to three times the estimated power consumption charge for 3 months or 3 months charge whichever is higher are dismissed.

(iii) That part of Regulation 55 which provides that no interest is payable to the consumer on the amount of deposit is held, invalid;

(iv) A writ of mandamus shall issue that hereafter the Board shall calculate the interest payable on the deposits made by the consumers under Regulation 55 at the rate of 10 per cent per annum on the amount, of deposit made by the consumer if the amount deposited is Rs. 100/- or more;

(v) The Board shall either pay the interest annually to the consumers concerned or adjust it towards amount due from them.

13. Appeals allowed.

