
(1998) 03 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 17271 of 1988 and Batch

Venkateswara Rice Mills, Uppal

APPELLANT

Vs

Superintending Engineer, Operation Rural Circle, APSEB, Hyd.
and Others

RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49, 59

Citation : (1998) 4 ALD 101 : (1998) 3 ALT 775

Hon'ble Judges : P. Venkatarama Reddi, J; Krishna Saran Shrivastav, J; A. Hanumanthu, J

Bench : Full Bench

Advocate : Mr. R. Subhash Reddy, Mr. M. Satyanarayana, Mr. N. Jaya Surya, Mr. B. Adinarayana Rao and Mr. E.V. Bhagiratha Rao, for the Appellant; Mr. K.N. Jwala, SC for APSEB, for the Respondent

Judgement

P. Venkatarama Reddi, J

1. In these writ petitions filed by High Tension Electricity Consumers, there are two questions which have to be answered by this Full Bench. They are :--

(1) When the electricity charges are permitted to be paid in instalments, whether in addition to interest under para 34 of the Terms and Conditions of Supply, additional charge (also called as "surcharge") as contemplated by para 32.2.1 is payable simultaneously on the outstanding amount ?

(2) How and in what manner the interest has to be calculated under para 34 i.e., whether the entire amount payable on the date of grant of instalments should bear interest and surcharge at the prescribed rate till the last date of payment or whether it should be calculated with reference to the remaining amount payable after deducting the amount paid in instalments from time to time ?

2. As the learned Judges constituting the Division Bench felt that the view taken

by the same Division Bench in W.P.No.8287 of 1988 is open to question and the contentions raised are not without substance, they thought it fit to refer these writ petitions to a Full Bench. That is how we are seized of these cases.

3. In exercise of powers conferred by Section 49 of the Electricity (Supply) Act, 1948, the Andhra Pradesh State Electricity Board (hereinafter referred to as "the Board") framed the Terms and Conditions of supply of electrical energy. An unilateral right has been reserved by the Board to vary the terms and conditions and to revise the tariff and other charges. Such power of the Board has been recognised and upheld by the Supreme Court in Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, . Para 26 of the terms of supply requires all consumers to execute agreements governing the supply of energy in the form prescribed by the Board from time to time.

4. Para 34(a), which is of immediate relevance to us, reads as follows:

"34. Payment of dues of the Board in instalments:

(a) The Board may permit a consumer when he so requests, to pay charges for electricity supplied, consumption deposit or any other charges in instalments provided that, where such request is granted the consumer shall in addition to any additional charges leviable due to belated payment as per the clause 32.2. hereof under the other terms and conditions of supply, pay interest charges at 24% per annum, on the amount outstanding out of the charges allowed to be paid in instalments."

The rate of interest was enhanced from 18% to 24% by B.P.Ms.No.420, dated 23-3-1992 with effect from 1-4-92. Many of the writ petitions herein relate to the period prior to enhancement.

5. At this juncture, we will notice condition 32.2.1 .(a) which is as follows :

"Bills shall be paid by the high tension consumers within fifteen days and by low tension consumers within fourteen days from the date of the bill falling which the consumer shall be liable to pay an additional charge at the rates as prescribed by the Board from time to time and notified in the Tariff Notifications of the Board. "In the case of consumers covered by Card system of billing the payment shall be made in the manner specified in the tariff applicable to such consumers-

6. The present rate of additional charge (or "surcharge", for the sake of brevity) is 0.07 paise per rupee per day, which comes to about 2.1% per month and 25% per annum. Earlier i.e., prior to 9-5-1989, the additional charge was 0.5% per week or part thereof and it works out to 2% per month.

7. Thus, the interest under para 34 and additional charge for belated payment under para 32.2.1 together comes to 49% and before enhancement, it was 42%.

8. The first question turns on the interpretation of para 34. The learned Counsel for the petitioners M/s. T. Anantha Babu and D. V. Nagarjuna Babu contend that the phrase "In addition to any additional charges leviable due to belated payment

as per clause 32.2." has to be construed reasonably and it would only mean that the consumer is liable to pay additional charges upto the date on which instalments come into force and it does not cast an obligation to continue to pay additional charges even thereafter. In other words, the learned Counsel contend that additional charge under 32.2.1 is only leviable in respect of the default period prior to the grant of instalments. When once the instalments are granted, according to the learned Counsel, and the instalments are cleared as per the time schedule prescribed by the Board, only interest at 18% or 24%, as the case may be, becomes payable but not additional charge, unless the dues are not cleared as per the instalments allowed. The learned Counsel argued that the question of payment of surcharge under 32.2.1. arises only if default is committed, that is to say, if the payment is not made within the outer limit mentioned in the said para or as per the time-schedule fixed for making instalment payments. Thus, the learned Counsel submits that a restricted interpretation has to be given to the words "in addition to" occurring in para 34 having due regard to its context and intendment. It is pointed out that instalments are granted to relieve the consumer of the hardship and it would be unjust to penalise the consumer with liability to pay as much as 42 to 49% extra. It is submitted that if the interpretation as suggested by the petitioners is not accepted, the payment of such high percentage of interest/surcharge would be arbitrary and unreasonable.

9. Though the interpretation sought to be placed by the learned Counsel for the petitioners on clause 34 appears to be plausible, on a deeper scrutiny, we are unable to uphold such an argument. The idea behind incorporating the words "in addition to any additional charges leviable due to belated payment" is to preserve the liability under clause 32.2 to pay surcharge despite the payment of interest on the outstanding dues. We do not think that the words "in addition to as per clause 32.2" are introduced merely by way of abundant caution; but, these words, in our view are meant to allow clause 32.2 to have its full sway. There is no warrant to give a restricted meaning to the said phraseology so as to confine the operation of clause 32.2 only upto the date of commencement of instalments. Apart from the fact that we have to read certain words into clause 34 if such interpretation is accepted, we do not think that the other interpretation which is consonant with the plain language used, leads to unintended or incongruous results. It is of vital importance for the effective functioning of the Electricity Board that its dues are promptly paid by the consumers. The Board, although a service -oriented statutory body is not expected to abdicate all business principles. Section 59 enjoins on the Board the duty to generate surplus funds of not less than 3% after meeting all costs and, expenses and it is towards this end, the operations of the Board have to be carried on and the tariffs are to be adjusted. It is in this back ground we have to appreciate the problem. While the power is reserved to the Board to accede to the representations of the consumers who may be facing financial difficulties and such enabling power is a necessary concomitant of the functions of the Board,

the Board in that process should not suffer problems which may hinder its effective and efficient functioning. No doubt, it seems that the collection of both additional charge and interest from those consumers who request for instalments may visit the consumer with extra burden, but, such a provision can be said to have been consciously introduced with a view to discourage the requests for deferring the payments. If the payment of interest alone at 18% or 24% as the case may be is made a condition for the grant of instalments, it is very likely that the Board may be flooded with requests for allowing deferred payments. The inability to realise the dues at the earliest will handicap the Board in many respects. The deleterious effects will be both direct and indirect. It may be difficult to assess them in terms of loss of interest alone. The loss of interest or compensation is one aspect, but non-realisation of dues in time is bound to have many other repercussions. We do not therefore see any particular reason to truncate or restrict the operation of the clause "in addition to the additional charges leviable as per clause 32.2." Let us view it from a different angle. A consumer who defaults in payment and is already under an obligation to pay the surcharge under clause 32.2, by getting an order permitting payment of instalments, enjoys immunity from disconnection. He is enabled to make use of power and thereby ward off the adverse consequences of power disconnection. In any case, he was liable to pay the late payment surcharge. But, when once he avails of a positive facility or concession by approaching the Board, there is nothing unreasonable in the Board insisting that he should pay interest under clause 34 over and above the late payment surcharge. A defaulting consumer who is a recipient of a positive advantage by the Board's forbearance in disconnecting the power supply, cannot be heard to complain that an extra amount is being demanded from him. The liability to pay additional charges under 32.2 is absolute and unqualified. There is no way of putting an end to it, unless any other provisions or terms and conditions specifically say so. Far from putting an end to that liability under 32.2, para 34, in our considered view, it only affirms and preserves that liability. There is nothing in the language of para 34 or 32.2 or in the scheme underlying the said terms and conditions which allowed the accrual of interest alone to the exclusion of liability to pay the late payment surcharge. The non-payment of bills within 15 days attracts the additional charge or surcharge under clause 32.2.1. In substance and in effect, it is a penal charge. It continues to have its full play till the dues are cleared. It cannot be said that with the advent of liability to pay interest under clause 34, the liability to pay this penal charge ceases, if that be the intention of the Board, there should have been an express language to that effect. In the case of clause 32.2.1, the liability is automatic and as observed already, it continues till the clearance of the dues. In the case of para 34, there is a positive action of the Board in deferring the payment and thereby arming the consumer with the right against disconnection so long as the instalments are paid. That is why the words "interest, and additional charges" are quite appropriate in the context and accordingly such words are used.

10. There is yet another angle from which the argument can be met. Prior to 1992, the rate of interest as per clause 34 was only 18%; later on, it was raised to 24%, if in the writ petitions pertaining to the pre-enhancement period, the Court takes the view that interest alone is payable, the consumers will positively get benefit by securing an order permitting payment by instalments. Instead of paying 24% by way of additional charge under clause 32,2, they can very well pay 18% and at the same time enjoy immunity from disconnection. This anomalous position would not have been intended by the framers of the Regulations. The intention behind making a provision for grant of instalments would not have been to put a premium on the act of default committed by the consumer. The argument to justify such anomaly on the ground that it must be deemed to be a concession extended to the consumer in genuine financial difficulties does not appeal to us. Such an argument does not take into account the other overwhelming considerations adverted to supra. The interests of a few consumers who may be undergoing real hardship, will have to yield to the paramount consideration of the Electricity Board discharging its duties in a manner conducive to larger public interest so as to sub-serve the policy underlying Section 59 and other allied provisions.

11. Another relevant aspect which we must make note of is that the interest charged is simple interest. Additional charge also stands on the same footing. That apart, as per the interpretation placed by us on clause 34, on a discussion of the second question, the interest and additional charge will be calculated only on the amount remaining unpaid on the date of each instalment, but need not be paid on the entire amount due on the date of grant of instalments. This method of calculation conforms to computation of interest on "monthly rests" as is known in banking parlance. This will also go to soften the rigour of clause 34.

12. In *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another*, the Supreme Court after having noticed the principle that an unreasonable term of "adhesion contract" will not be enforced by the Courts, found no legal objection in not providing for interest on consumption deposit or providing for a low rate of interest on additional consumption deposit while collecting interest from the consumers at high rates if the deposits are not made within time. At paragraph 121, it was held that the clause not providing for interest is "neither arbitrary nor palpably unreasonable, nor even unconscionable". The Supreme Court observed:

"In holding so we have regard to the following:

- (1) The Consumer made the security deposit in consideration of the performance of his obligation for obtaining the service which is essential to him.
- (2) The electricity supply is made to the consumers on credit as has been noted above.
- (3) The billing time taken by the Board is to the advantage of the consumer.
- (4) Public revenues are blocked in generation, transmission and distribution of

electricity for the purpose of supply. The Board pays interest on the loan borrowed by the Board. This is in order to perform public service. On those payments made by the Board, it gets no interest from the consumers.

(5) The Board needs back its blocked money to carry out public service with reasonable recompense.

(6) The Board is not essentially a commercial organisation to which the consumer has furnished the security to earn interest thereon."

13. These factors underscored by the Supreme Court are not exhaustive. We have referred to them to reinforce our conclusion that having regard to the functions enjoined on the Board and the problems and bottle-necks which the Board may have to face otherwise, para 34 ought not to be construed in a manner suggested by the petitioners' Counsel.

14. The learned Counsel for the petitioners have cited certain decisions in a bid to make good their submission that the contracts entered into by the State or its instrumentalities especially the contracts superimposed by the statutory provisions are not immune from attack on the ground of infraction of Article 14, that is to say, on the ground that the contractual clause is arbitrary and unreasonable. We are spared of the necessity to probe into this aspect as we are not in a position to say that an element of arbitrariness or unreasonableness will be writ large on the face of clause 34 if we reject the interpretation placed by the learned Counsel on the said clause.

15. In this context, we must bear in view the nature of functions and *modus operandi* of the Electricity Board as highlighted by the Supreme Court in *Ferro Alloys* case (*supra*) apart from other considerations adverted to *supra*. An infraction of Article 14 does not arise merely because a customer is visited with a penalty or extra liability of being called upon to pay interest and surcharge which together works out to a high-rate to enable him to defer the payment and at the same time avail of the electricity supply without interruption. The reasonableness of such extra payment cannot be judged from the stand point of a set formula or uniform yardstick. It is pointed out that under the terms and conditions of the supply of Tamil Nadu State Electricity Board, the liability to pay surcharge on the amounts allowed to be paid in instalments is not fastened on the consumer. But, the degree of fairness with which a consumer is treated may vary from State to State and would also depend upon the peculiar problems of the particular Board. The fact that the A.P.S.E.B. could have been more fair to the consumer by falling in line with its counter-part in Tamil Nadu does not *per se* give rise to violation of Article 14. The reasonableness of the impugned clause cannot, in our view, be judged by the Law Court on its own notions or relative standards of fairness. It is not necessary for us to go into the question whether unreasonableness by itself, without a potential for discrimination would be a ground of attack under Article 14 as we have not been able to perceive an element of palpable unreasonableness in clause 34 as interpreted by us.

Point No. 2:

The mode of calculation of interest and additional charges is the second question that has to be resolved. It appears that whenever instalments are granted, the Board is calculating the interest under para 34 and additional charges under para 32.2 for the entire amount for which the instalments are granted for the entire period upto the last date of instalment and then proportionately dividing the amount so arrived at by the number of instalments granted. In other words, the instalments and additional charges are spread over the entire period upto which instalments were allowed without reference to the amounts paid as per the monthly instalments. It is the contention of the petitioners that as and when the instalments are cleared, the interest and additional charges can only be applied to the balance amount which is liable to be paid in further instalments. We find force in this contention. The language used in para 34 "pay interest charges at 18% per annum on the amount outstanding out of the charges allowed to be paid in instalments" should be given its due meaning. The words "the amount of standing out of the charges" are very significant. The amount outstanding is not to be understood merely as the amount due on the date on which the instalments are granted. Otherwise, the words "out of the charges" become meaningless. What remains outstanding out of the charges allowed to be paid in instalments would be the amount remaining after payment of each instalment. It is on this amount the interest has to be calculated under para 34 but not on the totality of the amount which was due on the date on which the instalments were granted. Thus, there will be a proportionate deduction of the amount liable for interest and surcharge, with the payment of each instalment.

16. We do not see anything in the judgment in W.P.No.8287 of 1988 which has taken a view contrary to the above interpretation. On the other hand, the learned Judges of the Division Bench (Parvatha Rao, and" Siddappa, JJ) while construing condition No.28.6. read with para 34 observed : "Therefore this surcharge is attracted only in respect of such of those instalments which were not paid on the due dates." In the concluding part of the judgment, it was laid down : "The respondents can charge interest at 18% per annum under condition No.34 in force at the relevant time and also surcharge at 1 1/2% per month on delayed payment of instalments under condition No.28.6. Any excess amounts charged shall be paid by adjusting the same towards future bills". It seems to us that the learned Judges of the Division Bench who made the reference are therefore not right in observing that if the petitioner's contention is accepted, the view taken by the Bench in W.P.No.8287 of 1988 will have to be overruled. It is however, not necessary for us to deal with para 28.6 and about the correctness of the view expressed in W.P.No.8287 of 1988 in relation thereto, as in none of the cases before us, surcharge has been levied under clause 28.6. In the preface to the reference order, the Division Bench observed:

"These writ petitions involve the interpretation of conditions 32.2.1 and 34 of the Terms and Conditions of supply of electrical energy by the Andhra Pradesh State

Electricity Board ("Conditions of Supply" for short) in their application to the amounts payable by consumer towards charges for energy supplied on one hand, and conditions 28.6 and 34 to consumption deposit and additional consumption deposit on the other".

17. We are told by both the Counsel that in none of the writ petitions, the additional charge or interest levied on consumption deposit is in issue. We therefore refrain from going into that question.

18. There is also a passing observation in the reference order to the following effect,

"Another question that arises is whether Condition No.34 provides for instalments in respect of current charges for the electricity supply or in respect of arrears as well"

The power of the Board to grant instalments for payment of arrears has not been doubted by either of the Counsel and that point does not present itself for consideration at all on the facts and pleadings of the present cases. We therefore refrain from answering this question as well.

19. In the result, we answer question No.1 formulated by us against the writ petitioners and Question No.2 as per the discussion in the judgment. The bills impugned in the writ petitions shall be duly revised taking into account the legal position enunciated by us with reference to Question No.2.

20. The Writ Petitions are accordingly disposed of without costs.