

(1989) 08 KAR CK 0022

In the Karnataka High Court

Case No : W.P. Nos. 10729 of 1989 and other connected cases

West Coast Paper Mills Ltd., and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Electricity Board Electricity Supply Regulations, 1988 — Regulation 31.01

Citation : (1989) 2 KarLJ 329

Hon'ble Judges : S. G. Doddakale Gowda, J

Judgement

S.G. Doddakale Gowda, J.-Petitioners in these series have challenged the validity of Regulations framed by the respondent-Board providing for furnishing of cash security three times" the highest bill amount in a single month between January to October during a calendar year as ultra vires including the demands.

2. Petitioners mainly depend upon power supplied by respondent to run their industry in the State of Karnataka, some are high-tension consumers, some lowtension consumers and a few others for commercial purposes. They have made certain initial deposits at the time of securing power connection as per Regulations then in force. Under Regulation 55 of Electricity Supply Regulations, 1948 as amended and adopted by the respondentBoard could require a consumer to deposit security amount equivalent to two months average bill or two months minimum charges whichever was higher. This was later on amended enhancing it to three months. Regulation 31.03 prior to its amendment in March 1989, provided for furnishing cash security up to Rs. 1,00,000/- and exceeding Rs. 1,00,000/- 50 per cent to a limit of Rs. 10,00,000/-by cash and balance by Bank Guarantee. The enhancement to three months security was the subject matter in Karnataka Electricity Board v Gadag Mining Company (I.L.R. 1986 Kar. 503).

3. The old Regulations have been replaced by the Karnataka Electricity Supply Regulations, 1988. Tariffs have undergone revision from time to time.

Regulations 31.01 to 31.03 of the amended Regulations which is relevant for these cases read thus:

"31.01. Initial Security Deposit (ISD).-All prospective consumers shall pay, unless exempted, security towards power consumption charges to cover three months power supply bills, worked out on the basis of the estimated consumption as per the table given below or the three months. Line minimum charges, whichever is higher. The estimated power supply charges shall include fixed charges, if any, for LT installations and Demand Charges on 100 per cent contract demand for HT installations.

Type of installation. Estimated consumption per month

LT Installations:

- (a) Non-commercial lighting 10 units for every 250 watts or part thereof of sanctioned load.
- (b) Non-commercial Combincial Combined lighting, heating and Power. 100 units per KW. or part thereof of sanctioned load.
- (c) Commercial Lighting 20 units for every 250 Watts or part thereof of sanctioned load.
- (d) Commercial heating and/or Motive power. 135 units for every KW. or part thereof of sanction load.
- (e) Irrigation Pump Sets Yearly minimum charges as per tariff in force from time to time.
- (f) Public Lighting As per prevailing tariff.
- (g) Others 135 units per KW. or part thereof of sanctioned load per shift.

HT INSTALLATIONS:

- (h) All HT Installations 200 units per KVA. of Contract Demand.

Note.-xxxxxx xxxxx xxxxx

31.02. Additional Security Deposit (ASD).- After the installation is serviced, if the deposit held falls short of three times the highest bill amount during any single month during January to October of the calendar year, the difference shall become payable by the consumer as additional security deposit, within 30 days from the date of notice.

Note.-(i) The bill amount for the above purpose shall exclude taxes, arrears audit short claims, interest, back billing charges, penal charges for excess consumption/demand.

(ii) If any bill amount is for a period of more than one month, the bill will be calculated for a single month on prorata basis.

OLD REGULATIONS AMENDED REGULATIONS

30.03-Payment of Initial Security Deposit and Additional Security Deposit. 31.03-Payment of Initial Security Deposit and Additional Security Deposit.

The Security Deposit (ISD and ASD) shall be payable as indicated hereunder:
The Security Deposit (ISD and ASD) shall be payable as indicated hereunder:

a) Upto Rs. 1,00,000/- Cash only.b) Above Rs. 1,00,000/- 50% to a limit of Rs. 10,00,000/- by Cash and balance by Bank Guarantee. The entire amount of initial Security Deposit and additional Security Deposit shall be payable in the form of CASH only.

The Bank Guarantee shall be valid for a period of not less than two years and shall be renewed at least one month before expiry.

Pursuant to this amended regulations, a demand has been made to deposit cash security of three times" the highest bill amount in any single month during January to October of the calendar year.

"Calendar year" means the period between the first day of January of an year and the thirty first of December, of the same year.

4. Petitioners contend inter alia, that there is no rational basis for demanding cash security three times" the highest consumption in any single month between January to October; they contend that unilateral revision is arbitrary, unreasonable and violative of Article 14 of the Constitution of India, uniform demand of cash security of three times the highest average from all consumers, be it high tension, low tension, domestic, non-domestic, commercial and non-commercial being irrational is liable to be struck down as arbitrary, demand made in addition to hike in tariffs about 6-7 times during the relevant period is with a view to raise an additional resources and has no co-relation with service utility.

Referring to Section 24 of the Indian Electricity Act, 1910 which enables the authority to disconnect the power supply in case of default to pay current charges, procedure provided for recovery as arrears of land revenue, levy of interest for delayed payment and other various modes provided for recovery of current charges contend that there is no justification to insist upon payment of cash security ; if the object was to protect the interest of the Board in realising the power charges the same could have been achieved by accepting Bank Guarantee. Insistence upon cash security in addition to so many protection provided for recovery was illegal and arbitrary. The various committee reports and tariff reports reveal inefficient functioning of the Board and its financial irregularities and the object of collecting cash security is only a guish to cover such lapses.

The industrialists who have borrowed money for running business cannot afford to part with such huge amount. It was contended that they have to pay for raw-

materials and finished products are sold on credit basis, the realisation of which would take considerable time. The Board by collecting such huge amounts as cash security deny the benefit of making use of the amount as capital investment for their business. With the same amount they will be in a position to run the industry efficiently and in case of insistence of cash security, it will not merely cause great hardship but also would result in closure of concerns. To cite an instance, in writ petition No. 10729 of 1989, the petitioner is required to pay/deposit a sum of Rs. 1,21,20,485/- and such instances are innumerable.

5. Reliefs are resisted contending that supply of electricity is held to be "goods" and the Board as supplier can insist upon the terms and conditions on which it intended to supply the power; Board is not required to function on "no profit and no loss" basis ; the regulations are in conformity with the power conferred under section 79(j) and (k) of the Electricity (Supply) Act, 1948, the Board is empowered to collect an additional deposit amount if the deposit standing to the credit of the consumer fall short of the amount equal to three times the highest bill amount in any of the months during January to October of the calendar year. Regulations are statutory and the validity thereof are not open to challenge. Collection of security deposit on the basis of the highest consumption in the preceding year is "just, fair and prudent". If collection of security deposit based on consumption worked out on an average of three months is valid in law as held by this Court, it is not possible to comprehend how the security demanded on the basis of the highest consumption in any single month during January to October in a calendar year would be invalid. The quantification of the amount of deposit based on average consumption in an year, as per old Regulations involved enormous amount of paper work, time and expenses. The number of consumers to whom the Board make supplies and from whom the security Deposit is to be collected is about 45 lakhs approximately. Experience of the Board has shown that in order to ensure due payment of charges for power supply it is necessary to have adequate deposit by way of security from which the Board can recoup its dues when a consumer commits default. There have been numerous cases of delay and default exposing the Board to large financial loss and hardship. It also affects public revenues and satisfactory functioning of a Public Statutory Corporation. This is sought to be remedied by the amended regulation. The consumption keeps varying and in order to safeguard the financial interest of the Board it is essential and reasonable to have a security deposit as prescribed by the regulation. The Board cannot be expected to launch on a litigation to recover consumption charges and on that account incur huge expenditure which will be a drain on public revenues. Further, such litigation may prove a futile exercise as most of the property of industries would be mortgaged/hypothecated and the Board as an unsecured creditor would generally not be able to recover any thing.

Interest is paid at 10% per annum on deposit amount. There is no reason for the complaint of hardship or inconvenience or loss to a consumer. The security deposit has relation to the monthly consumption charges and demand of it is wholly unexceptionable. The Board, as a supplier, has right to prescribe such

conditions as are permissible under section 49. The public organisation cannot run on Bank Guarantee. Quantum of amount required to be furnished as security, form of guarantee are all matters purely within the administrative discretion of the Board and are not justiciable.

Furnishing particulars in certain cases, contend that the grievance has been unduly magnified and when compared with the security required to be furnished under the Old Regulations and monthly bills, hike in security is meagre. To illustrate: (a) in writ petition No. 8870 of 1989, the particulars furnished are as follows:

Month Demand Energy Remarks

Jan. 88 7920 24,42,600 3 MMD-As per Old Regulation 75,94,000

Feb. 88 7740 23,90,400

Mar. 88 8100 23,92,200

Apr. 88 10530 28,96,200

May 88 10980 38,98,800 3 MMD-As per New Regulation 84,01,200

June 88 11250 40,59,000

July 88 13680 50,44,000

Aug. 88 13860 50,59,800

Sept. 88 13950 49,35,600 (by taking highest month bill between Jan. 88 to Oct.88)

Oct. 88 14670 46,67,400

Nov. 88 14580 50,97,600

Dec. 88 14490 56,53,800 Details are worked out thus:

3 MMD taking highest: 50,59,800

August: DGP 7,98,400

NTPC 14,53,900

-----28,07,500-----

Demand 13,860 x 40 x 3 = 16,63,200

Energy 28,07,500 x 8 x 3 = 67,38,000

-----84,01,200-----

Deposit already held: 13,46,050

-----70,55,150-----

(b) In writ petition No. 10179 of 1989, the particulars are furnished as follows:

Month Demand Energy Bill amount

Jan 88 - DC - DC

Feb. 88 500 83820 1,13,520-00

Mar. 88 1440 206580 2,30,567-30

Apr. 88 520 126480 1,63,230-00

May 88 2460 204120 1,31,715-40

June 88 480 10860 55,309-40

July 88 470 12540 36,229-30

Aug. 88 1440 396660 2,33,042-00

Sept. 88 1717 351900 6,17,616-00

Oct. 88 2017 530600 5,86,543-00

Nov. 88 467 107000 1,19,785-40

Dec. 88 2000 332200 5,06,740-10

MMD AS PER NEW REGULATIONS:

Oct. 88 2017 x 40 80,680-00

5,30,600 4,24,480-00

----- 5,05,160-00 x 3-----

15,15,480-00

Less Paid 2,00,000-00-----

MMD AS PER OLD REGULATIONS:

Energy charges:

Aug. 88 to Oct. 88 1279160-----3 = 4,26,387 units x 0.80 ps. x 3 =
10,23,328-80

Demand Charges:

Aug. 88 to Oct. 88 5175-----3 = 1725 KVA x Rs. 40 x 3. = 2,07,000-00

-----12,30,328-80

Less paid 2,00,000-00

-----10,30,328-80-----

(c) In W.P. No. 10729 of 1989, the particulars furnished are as follows:

Month Demand Energy Bill Amount Remarks

Jan. 88 10200 4129200 36,90,960
Feb. 88 9780 4185600 37,35,120
Apr. 88 10080 4198800 37,42,080
May 88 9960 4143600 36,93,360
June 88 10440 4226400 37,77,840
July 88 10440 4320000 38,52,720
Aug.88 10140 5360640 47,98,448
Sept. 88 10440 5646000 51,38,024
Oct. 88 10320 5535600 48,30,960
Nov. 88 10500 5191200 48,62,000
Dec. 88 10620 5538000 48,44,580
Jan. 89 10680 5140800 (Sic)
Feb. 89 10680 4778000 "
Mar. 89 10500 5010000 "

Taking the highest consumption charges of September 1988 which was 51,38,024, they have claimed three times the highest consumption charges, as security, which would come to nearly 1,54,00,000. After deducting initial deposit they are required to furnish cash security of Rs. 1,21,20,485/-.

6. The following points emerge for consideration from the pleadings and the arguments: - (1) Whether the regulation 31.02 and 31.03 which enjoin a consumer to furnish cash security to an extent of three times the highest consumption charges in any single month between January to October are illegal and void?

(2) Whether those regulations are hit by Article 14 of the Constitution?

(3) Whether the failure to place these regulations on the floor of the State Legislature make them inoperative and ineffective? and (4) By demanding cash security on the basis of highest unit consumption in the preceding year, whether the Board has, in fact, given retrospective effect to those regulations?

7. The area of controversy to the extent it has been covered either by the decision of this court or of the Supreme Court may conveniently be disposed of in the first instance.

The old Regulation 55 provided for furnishing of security three times the average consumption of a month during a calendar year. Regulation 31.03 prior to its

amendment on effect from 30-4-1989 provided for furnishing of security deposit (ISD and ASD) by cash up to Rs. 1,00,000/- and above Rs. 1,00,000/-50% to a limit of Rs. 10,00,000/- by cash and balance by Bank Guarantee. Amendment to this regulation stipulates that the entire amount of initial security deposit and additional security deposit shall be payable in the form of cash only.

This Court in Gadag Mining Company's case has held that Sec. 49 conferred power on the Board to lay down conditions through regulations for the supply of electrical energy and power to lay down conditions included the power to demand security deposit from consumers as a condition for supply of electrical energy:

It is stated thus:

"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 Jagadamba Paper Mills 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 Hon'ble 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 of 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."

Supreme Court in Jagadamba Paper Industries (P) Ltd., v H.S.E. Board (AIR 1983 SC 1296) has upheld the power of the Board to frame such regulations. The relevant portion reads thus:

"We are of the view that, the Board has been conferred with statutory power under Section 49(1) of the Act to determine the conditions on the basis of which supply is to be made. This Court in Bisra Stone Lime Co., Ltd., v Orissa State Electricity Board (1976) 2 SCR 307: AIR 1976 SC 127) took the view that the enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applied to the tariff would equally apply to the security, that being a condition in the contract of supply."

(emphasis supplied)

8. Various views expressed by different High Courts on the subject directly arose for consideration by the Supreme Court in the case cited supra.

Andhra Pradesh High Court in K.C. Works v Secy APSEB. Vidyut Soudha (A.I.R. 1979 AP 291), after referring to sub-para (a) of the first proviso to clause VI of the Schedule to the Indian Electricity Act, has held that what was sufficient security was an exclusive province of the Electricity Board to decide as a supplier.

The Court also held that if the security deposit demanded was unreasonable, it is open to the Court to interfere with it and examine the reasonableness or otherwise of the requirement. The Supreme Court has approved the ratio of the Andhra Pradesh High Court in K.C. Works case extracting a passage which reads thus:

"To our mind, this is a quite satisfactory explanation of the reasons behind insistence on cash security. Certainly a public utility service like Electricity Board cannot launch itself on litigation to recover consumption charges on a large scale. Power generation, which it does is an essential service and that shall never be allowed to suffer on account of improper security. We have already referred to the fact that it is reasonable on the part of the Board to require security for three months' consumption charges. Now to require that amount to be deposited in the form of cash is eminently reasonable.

xxxxx xxxxx xxxxx

Rajasthan High Court has accepted the view of the Andhra Pradesh High Court. We accept the view of the Andhra Pradesh High Court."

In view of the authoritative pronouncement of the Supreme Court and of this Court declaring that the Board is competent to frame regulations and insist for furnishing of cash security, the first issue would be beyond the pale of controversy.

9. The third issue was not seriously pressed in view of the Division Bench decision of this Court in *State of Karnataka v Anjanappa* (I.L.R. 1988 Kar. 1695).

10. Sri U.L. Narayana Rao submitted three facets in support of the second issue. The first was that Regulation 31.01 which provided for initial security deposit, classified installations as low-tension installations and high-tension installations. Again as amongst low tension installations, there is further classification such as non-commercial lighting, non-commercial combined lighting, heating and power, commercial lighting, commercial heating and/or motive power, irrigation pump sets, public lighting and others. But, there is no such classification either in Regulation 31.02 or 31.03. His submission was when the Board has advisedly made classification as amongst low tension installations and between low tension installations and high tension installations, the same classification should have been made for furnishing of additional security and for payment of cash security. His submission was treatment of unequals as equals was arbitrary.

Additional Security Deposit is correlated to consumption charges whatever may be the nature of installations ; Tariffs vary. A consumer, be it a low-tension installation or high-tension installation, is required to furnish three times the highest bill amount in any month between January and October of a Calendar year, as an additional security. Additional security required to be furnished under this Regulation mainly depended upon consumption by the consumer. Whatever may be the extent of initial security to be furnished under Regulation 31.01 and

whatever may be the tariff, a consumer is required to furnish three times" the highest bill amount as security which mainly depends upon his/its own consumption. The classification made for payment of initial security deposit and tariff will have no analogy. Hence, I find no merit in this contention.

11. Next, he contended that insistence of cash security three times the highest bill amount of any single month during January to October was arbitrary, capricious, no nexus with the object intended to be achieved. He further contended that as in the old Regulation the furnishing of Bank Guarantee would meet the requirement of the Board and denial of such an huge amount which would be a capital investment for persons like petitioners/ industrialists to run their concern is arbitrary, illegal and the dominant object was only be raise its resources. He also contended that the Board with service orientation is required to render services on "no profit and no loss" basis and cannot squeeze an industrialist and exact money from them

Sri H.B. Datar, learned Senior Advocate and Sri S.N. Murthy, learned Advocate, supporting this view submitted that insistence of cash security three times the highest consumption in a month was arbitrary and illegal. Citing instance they submitted that in a particular month they might have consumed more electrical energy to produce more goods to meet the demand in the market and in particular months, the consumption may be below their requirements. If the highest is taken as the criteria, the cash security required to be furnished would be 6 or 7 times the average.

In netshall, the contention of learned Advocates was three times the average security prescribed under the old Regulations taking into consideration the consumption in lean months and peak months was reasonable and the criteria prescribed under the impugned regulations was arbitrary and illegal. Their further contention was as the saying goes, by killing a goose laying golden eggs neither the Board will survive nor the industry will prosper. It will off-set industrial economy, instead of encouraging industry it curbs production; runs counter to a-vowed object of national policy on account of the monopoly which the Board is enjoying ; it intends to squeeze industrialist. The Board as an instrumentality of the State should act reasonably and justly as a prudent supplier would have conducted having regard to the national policy. They submitted, impugned regulation is very oppressive and causes irreparable hardship.

This argument though impressive and attractive, omits to take note of the interest of the Board in case of default or how best its interest be protected. The theory expounded by me in BWSSB's case that impost of financial burden was impermissible in law and an exaction which was made without any regard to any rule of apportionment is, therefore, not a tax and is not within the constitutional authority of the Government or its instrumentality has been exploded by the Division Bench decision in BWSSB v Ramakrishna Aithal (I.L.R. 1888 Kar. 488). Supreme Court taking into consideration the machinery provided for recovery of

electric charges in case of default has approved the views of Andhra Pradesh High Court and the Rajasthan High Court that the insistence of cash security at three times the average consumption charges was eminently reasonable and would avoid the Board from incurring any financial injury. Reliance placed on the decision of the Supreme Court in *N.M.C.S. & W Mills v Ahmedabad Municipal Corporation* (AIR 1967 SC 1801) will have no bearing as that case dealt with rateable value of the premises for the purpose of taxation and has no resemblance to decide the issue involved in these cases. Hence, I find no merit even in this contention also.

12. Another facet of the same contention was that the Board cannot be permitted to take into consideration the faulty meter reading or the criteria adopted for back-billing. Sri S.G. Sundaraswamy, learned counsel for the Board, submitted that note appended to Regulation 31.02, extracted above, would exclude such possibility and if there is any error in reading or the functioning of the meter, the consumers are at liberty to get it rectified.

13. The last submission of Sri U.L. Narayana Rao was that in the State of Maharashtra there is no such provision and consequently respondent-Board which is discharging the duties of a like nature cannot impose conditions which are more onerous. His submission was that in all fairness, respondent-Board should have adopted the same criteria. If respondent has followed the same criteria, it would have been a happy feature. But the question is that on account of not adopting the same procedure, whether the impugned regulation can be declared to be violative of Article 14 of the Constitution of India.

Supreme Court in *Prabhakaran Nair v State of Tamil Nadu* (A.I.R. 1987 SC 2117) has stated thus:

"Art. 14 of the Constitution does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments."

Hence, I find no merit even in the last contention also.

14. Sri Farooq, learned counsel for the petitioner in writ petition No. 10729 of 1989 contended that the petitioner is required to pay a sum of Rs. 1,22,07,620/- as an additional security deposit and in case, a substantial capital were to be held up with the Board as cash security, it would be left with no avenues to run an industry and will automatically tend to liquidation. Relying on the letter, Annexure-G, dated 17-4-1989 contended that respondent itself has conveyed its approval according permission to furnish Bank Guarantee towards security deposit within four months, hence, Board was estopped from insisting for cash security.

Submission of Sri Sundaraswamy was that when the consumption charges of the petitioner is in the range of 51 lakhs and odd, necessarily three times" of that would exceed a crore and odd and the demand is well within the Reglns. Regarding the plea of estoppel, it was submitted that letter, Annexure-G was written by the subordinates of the Board prior to circulation of the Gazette copy amending Regulations and that would not operate as an estoppel. He also relied on the decision of the Supreme Court in *M/s. Star Diamond Co. India v Union of India* (A.I.R. 1987 SC 179) in support of the contention that such letters would not operate as an estoppel.

15. Sri S.N. Murthy, learned counsel appearing for petitioner in writ petition No. 10179 of 1989 contended that on account of failure of his generator, the petitioner was constrained to consume more power and that cannot be taken as an yard-stick to fix the quantum of cash security. Sri Sundaraswamy with reference to the units consumed by the petitioners, set out at para 5 above, submitted that for consecutive two months the rate of consumption had exceeded the demand and at the third month there is an immediate reduction so as to prevent any drastic action being taken for continuous consumption of power for a period of three months exceeding the demand. According to him, the fluctuation in units for obvious reasons cannot be the basis to decide the validity or otherwise of the impugned regulations.

16. One other salient factor canvassed by Sri S.N. Murthy was that regulation which provides for furnishing of cash security three times" the highest consumption in a month during January to October in a calendar year on like term should have provided for reduction or revision in case of drip in consumption and failure to provide machinery would vitiate the impugned regulation. The need of energy by an industrialist is always on the higher side and very rarely come across instances of reduction in consumption. Drip in consumption cannot be ruled out having regard to the industrial unrest and of liquidation of certain concerns. In such cases, it is needless to state that the consumer will be entitled to satisfy the Board for reduction, revision, as the case may be, if there were to be continuous drip in consumption. But non-providing of machinery to meet such contingency by itself will not vitiate the impugned regulations.

17. Last string of the submission of learned Advocates to bring this issue within the ambit of new dimension of Article 14 of the Constitution was that existing form of furnishing security by way of Bank Guarantee would have met the object of the Board of obtaining security and there was no necessity to insist on cash security and that too three times" the bill amount in any single month during January to October of a calendar year instead of three times" the average charges. When once it is accepted that the Board is competent to insist to furnish sufficient security, it is the exclusive domain of the Board to decide the form and whether it should be three times" the highest bill amount or three times the average bill amount and not for the Court to decide its wisdom. In this context, it

is necessary to bear in mind the observation of the Supreme Court in Maharashtra S.B.O.S. & H.S. Education v Paritosh (A.I.R. 1984 SC 1543) which reads thus:

"In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation etc., and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits or such a policy because its scrutiny has to be limited to the question as whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute. Though this legal position is well established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned cl. (3) of Regn. 104 is ultra vires."

(emphasis supplied)

18. Now, coming to the last issue, it was contended by the learned counsel for petitioners that the impugned regulations are prospective and the liability of the consumer can be determined with reference to the consumption for the period from 1st January 1989 to 31st October 1989 and by raising a demand with reference to the figures of the preceding year, the Board has purported to give retrospective effect to these regulations. Consequently, it was contended that the impugned demand must be held to be premature.

19. It is not even the case of the respondents that these regulations are retrospective. Sri Sundaraswamy, learned counsel for the Board, submitted that

under the old regulations when persons like petitioners were required to furnish security, the readings of the preceding year were taken into consideration and only on that basis they furnished security. He submitted that entitlement during "power cut" is decided with reference to the consumption in the preceding year. He submitted that for all these purposes, reading of the preceding year is taken into consideration and that is how all the consumers have understood and there is no justification to understand the implication of these rules differently. In this view, he submitted that the demand based on the statistics of the preceding year was just and proper.

20. Though the tenor of the contention of petitioners appears to have some force, on a further examination, I find no merit in this contention. Merely because the Board has taken the statistics of the previous year for the purpose of making a demand under the Regulations, it cannot be said that the Board has given retrospective effect to these Regulations.

21. Implication of retro-activity or retrospective effect has been explained by Maxwell on the Interpretation of Statutes, Twelfth Edition, at page 216, thus:

"Other statutes, though they may relate to acts or events which are past, are not retrospective in the sense in which the word is used for the purposes of the rule under consideration. The following cases illustrate this point.

By section 2 of the Poor Removal Act 1846: "No woman residing in any parish with her husband at the time of his death shall be removed.....from such parish, for twelve calendar months next after his death, if she so long continue a widow". In *R.V. Inhabitants of St. Mary, Whitechapel* (1848) 12 O.B. 120) it was sought to remove within the twelve month period a woman whose husband had died before the Act was passed, on the ground that to make the section apply in such a case was to construe it retrospectively, the right to remove being a vested right which had accrued on the man's death. But the Court held otherwise, Lord Denman C. J. (at P. 127) saying "that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing". As the same judge said in another case, no one would class statutes of limitation or prescription as retrospective merely because the space of time which is essential for their operation may consist in part of time passed before the Act "

(emphasis supplied)

Same is the view of the Supreme Court in *Sree Bank Ltd. v S.D. Roy & Co.* (A.I.R. 1966 SC 1953) and *Kapur Chand v B.S. Grewal* (A.I.R. 1965 SC 1491). Hence, there is no merit in the plea that the Board has given retrospective effect to these Regulations.

22. The Board by providing for payment of interest in the Regulations, as suggested by the Supreme Court and this Court, has removed that infirmity also.

23. It was represented at the Bar that the Government is considering the grant of exemption to domestic consumers from the operation of the impugned regulations and decision rendered now should not come in the way of Government taking an independent decision.

Having regard to this submission it is made clear that this order has not expressed any opinion on the question whether domestic consumers form a separate class by themselves and/or whether the uncertainty which the Board has pleaded for recovery of energy charges as unsecured creditor would prevail even in the case of domestic consumers. It is for the Government to take decision on its merit in accordance with law on this issue.

24. Dismissal of these writ petitions shall not disable the petitioners from furnishing cash security in five monthly equal instalments as per the concession made at the time of consideration of interim order.

25. For the reasons stated above, I find no merit. Writ petitions are accordingly dismissed.

Writ petitions dismissed.