

ALLAHABAD HIGH COURT

Modi Industries

Vs.

U.P.S.E. Board

Civil Misc. Writs Nos. 515 and 662 to 664 etc. of 1976

(K.N. Seth and R.S. Singh, JJ.)

16.05.1979

JUDGMENT

K.N. Seth, J.

1. In these petitions filed by the consumers of electrical energy supplied by the U.P. State Electricity Board the main question involved is whether the U.P. State Electricity Board (hereinafter referred to as the Board) has power or authority to demand from the petitioners any additional amount of security deposit on the basis of its letter dated 9th Dec., 1975.

2. The petitioners entered into separate but identical agreements with the Board for supply of electrical energy for industrial purposes. For sake of convenient reference to facts necessary for the decision of the question involved, Civil Misc. Writ Petition No. 515 of 1976 filed by Modi Industries Ltd., (Steel Section) is made the leading case.

3. The Board contracted with the petitioner company to supply 9,500 KW electrical energy. The Rate Schedule applicable to the petitioner was HV-2. A deed of agreement was executed on 31st Dec., 1970. Under the agreement the petitioner company deposited with the Board a sum of Rs. 3,44,135 as security. The Board has now made a further demand of over Rs. 9,00,000 as additional security. The case set up by the petitioner is that neither under the Indian Electricity Act, 1910 (hereinafter referred to as the 1910 Act) nor under the Electricity (Supply) Act, 1948 (hereinafter referred to as the 1948 Act) nor under the agreement entered into between the parties the Board is authorized to demand additional security.

4. The stand taken by the Board is that after the agreement entered into between the parties the rates for supply of energy have been enhanced from time to time. At present the Rate Schedule framed in 1974 is in force. Normally the meter reading is taken after every thirty days and it takes near about fifteen to twenty days thereafter to prepare the bills and issue them to the consumers. A further period of fifteen days is allowed to the consumer to make the payment. Seven days' disconnection notice after the expiry of the due date is also given to the consumer. Thereafter it takes two-three days to verify the accounts etc., to disconnect the supply for non-payment of a particular Bill. In this way charges for three months energy consumption always remain due from the consumer while the bill for one month consumption is served upon him at a time. In order to safeguard the financial interest of the Board a sum amounting to three months' average consumption of electric energy is being demanded as the security initially furnished by the petitioners has become insufficient. It is asserted that under clause 'VI' of the Schedule to the 1910 Act the Board is competent to demand sufficient security from the consumer in order to safeguard its interest. It is further asserted that the amount of additional security demanded on the basis of 3 months' consumption of energy is just and reasonable.

5. Under the 1948 Act the Board is not a licensee as defined in that Act but by virtue of Section 26 the Board is deemed a licensee and has all the powers and obligations of a licensee under Act IX of 1910. The second proviso appended to Section 26 provides that the provisions of Cl.VI of the Schedule to the 1910 Act are made applicable to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. Clause '2' of the Agreement entered into between the parties, which provides that the agreement shall be read and construed in all respects in conformity with all provisions of the 1910 Act and the 1948 Act or any subsequent amendments thereof and the Rules and Regulations made thereunder from time to time, has the effect of making Cl.VI of the Schedule applicable to the agreement between the parties. Learned counsel for the Board contended that Cl.VI of the Schedule empowered the Board to demand sufficient security from the consumer in order to safeguard its financial interest. The relevant part of Cl.VI reads as follows :

"VI. Requisition for supply to owner or occupiers in vicinity - (1) where, after distributing mains have been laid down under the provisions of Cl.IV or Cl.V and the supply of energy through those mains or any of them has commenced a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition or within such longer period as the Electrical Inspector may allow supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition :

Provided first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it –

- (a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him an annual revenue not exceeding fifteen per centum of the cost of the service-line required to comply with the requisition, and
- (b)

Provided secondly, that the licensee shall be entitled to discontinue such supply –

- (a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days, after the service upon him of notice from the licensee requiring him so to do, or
- (b) to (d)"

This rule is concerned with the stage when a requisition is made by the owner

or occupier of any premises for supply of energy for such premises. It provides that within a month from the making of the requisition or within such extended period as the Electrical Inspector may allow, the Board shall supply energy in accordance with the requisition. The obligation to supply energy requisitioned is subject to the condition that the consumer, within fourteen days after the service on him by the licensee of a notice in writing, tenders to the licensee a written contract in the approved form duly executed and furnishes sufficient security binding himself to take a supply of energy for not less than two years. The amount of security will be such as will assure to the licensee at the current rates charged by him an annual revenue not exceeding fifteen per centum of the cost of the service-line required to comply with the requisition. The security that the consumer is required to furnish at this stage has nothing to do with the security for safeguarding any financial interest of the licensee for the energy consumed by the owner or occupier of any premises. We are unable to accept the contention of the Board that by virtue of this clause the Board is empowered to demand any or every type of security that the Board may consider necessary in order to safeguard its financial interest. The security contemplated under the proviso to Clause VI of the Schedule is for the purpose of binding the consumer to take supply of energy for not less than two years. The extent of security shall be such which will assure to the licensee an annual revenue not exceeding 15 per cent of the cost incurred in laying the service-line in order to comply with the requisition. It has nothing to do with the security that may be taken by the licensee under the agreement entered into with the consumer for payment of the bills for consumption of energy.

6. Clause (a) of the second proviso also cannot be pressed into service in support of the demand for additional security made by the Board. That provision is attracted only when the owner or occupier of the property to which the supply is made has not already made the security contemplated by clause (a) of the first proviso or if the security given by him has become invalid or insufficient and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within the specified time after service upon him of a notice from the licensee requiring him so to do. We are not prepared to read this provision as empowering or authorizing the Board to demand an additional security if the security furnished by the consumer under the agreement with the Board for any reason becomes

insufficient to safeguard the financial interest of the Board for supply of energy to the consumer. This provision does not authorize the Board to ask for additional security from the consumer on the ground that the original security furnished by him has become insufficient on account of the fact that the rate for supply of the energy has been enhanced and normally when a bill for a month's consumption of energy is served on the consumer he has already consumed energy for about three months for which the initial security furnished by the consumer is rendered insufficient. Apart from Ch.VI referred to above, no other provisions of 1910 Act or 1948 Act have been brought to our notice which empower the Board to demand additional security from the consumers to safeguard its interest with regard to the value of energy supplied to the consumers during a particular period.

7. It is significant that by cl.'13' of the agreement it was provided that the rates stipulated in the agreement were subject to revision by the Electricity Board from time to time under the provisions of the 1948 Act. No specific provision was made for revision of the amount of security which the consumer was required to furnish. Under cl.'16' of the agreement a fixed sum of money was stipulated to be furnished as security by the consumer and it was provided that the supplier shall refund the said amount of security to the consumer upon the termination of the agreement and after satisfaction of all dues, payable to the supplier. It was further provided that in the event of non-payment by the consumer of any sum of money which may become due and payable to the supplier, the supplier was entitled to appropriate the security deposited towards payment of such sums due or payable by the consumer. In the event of such appropriation the consumer was required to deposit such sum as to bring the security to the stipulated amount. The parties did not intend that if the stipulated amount of security remained intact, any amount would be demanded as additional security.

8. Learned counsel for the petitioners contended that the demand made by the Board for additional security to safeguard its financial interest to the extent of three months' consumption of energy was unjust and unreasonable. It was open to the Board to submit its bills every month and additional burden could not be fastened on the consumer on account of the incompetence or inefficiency of the Board to submit the bills in time. We do not consider it necessary to deal (with)

this aspect of the matter as in our opinion, the Board is not competent to demand any additional security for the purpose for which the Board has made the demand, assuming that the time taken in submitting the bills is not due to incompetence or inefficiency of the Board.

9. Learned counsel for the Board raised an objection regarding the maintainability of the writ petitions. It was asserted that cl.'18' of the agreement provided for a remedy by way of arbitration in respect of a dispute of the nature raised in these petitions. In this connection reference was made to *Titagarh Paper Mills Ltd. v. Orissa State Electricity Board* ¹ In that case the dispute related to levy of coal surcharge. The Supreme Court overruled the contention that the coal surcharge could be imposed in exercise of powers under Sections 49 and 59 of the 1948 Act. Dealing with the claim of the Board that it had power under Clause 13 of the agreement to levy the coal surcharge the Supreme Court observed that all questions such as; whether the Board had power under Clause 13 of the agreement to levy any coal surcharge at all when no such power was conferred on it by the Act, whether the action of the Board in levying the coal surcharge on the appellant under Clause 13 of the agreement was arbitrary and unreasonable or whether it was based on extraneous and irrelevant considerations and whether on the facts and circumstances of the case, the Board was justified under Clause 13 of the agreement to levy the coal surcharge on the appellant, were plainly questions arising under the agreement and were covered by the arbitration provision in Clause 23 of the agreement. The principle laid down in the aforesaid case is not attracted to the nature of dispute raised in the present petitions which relate to the authority of the Board under the statutory provisions to demand additional security. It does not relate to the interpretation or construction of any of the provisions of the agreement or to the rights and obligations of the parties thereto or as to any other matter or thing concerning or arising out of it.

10. The Board is a statutory authority and has to act within the framework of the statutory provisions applicable to it. If the act of the Board is found to be not in consonance with or in breach of some statutory provisions of law, rule or regulation, it is open to challenge in a petition under Article 226 of the Constitution. In these petitions no contractual rights are sought to be enforced which may more suitably be agitated in a competent Civil Court as contended

by the learned counsel for the Board.

11. The contention of the Board that the dispute raised in the present petitions could be referred to the Electrical Inspector as provided for in sub-Clause (3) of cl.VI of the schedule has no substance. The dispute raised in these petitions is not of the nature specified in that provision and could not, therefore, legitimately be referred to the Electrical Inspector.

12. In the result, the petitions are allowed. The demand for additional security made by the Board from the petitioners in pursuance of the D.O. letter dated December 9, 1975 is quashed. Parties shall bear their own costs.

Petition allowed.

Cases Referred.

1. ((1975) 2 SCC 436)