

ANDHRA PRADESH HIGH COURT

K.C. Works

Vs.

APSEB, Vidyut Soudha

Writ Petn. No. 2224 of 1976 and Writ, Appeal No. 156 of 1977

(A. Sambasiva Rao C.J. and P. Ramachandra Raju, J.)

07.02.1979

JUDGMENT

A. Sambasiva Rao, C.J.

1. Is the Andhra Pradesh State Electricity Board within its rights in demanding security deposit in cash representing three months' consumption from the consumers of electrical power ? That is the question which is common to both the Writ Appeal as well as the Writ petition. That is why they are placed before us together. The Writ Appeal, arises out of writ petition No. 2359 of 1975 which was dismissed by our learned brother, Sheth J.

2. A detailed statement of the facts of the two cases is not necessary. It would be sufficient if we briefly refer to the main features of Writ appeal No. 156 of 1977 in order to appreciate the contentions raised in these two matters; The appellant and the petitioner are consumers of electrical power. The appellant is the Andhra Paper Mills Ltd., Rajahmundry and the petitioner in Writ Petition No. 2224/76 is Kistna Cement Works, the Associated Cement Companies Ltd., Tadepalli. Both these Industries paid the initial consumption deposits. The amount paid by the writ Appellant towards that deposit was Rupees 10,94,000/-. The Electricity Board, however called upon them, to deposit a further amount equivalent to charges for three months' average consumption as additional consumption deposits. In the instant case of the Writ Appellant, the amount equivalent to charges for three months is Rs. 31,85,406/-. After deducting the initial consumption deposit made, the Board called upon the Writ Appellant to pay in cash the balance of Rs. 20,91,406/-. This further demand for deposit in the form of cash is challenged in these writ proceedings.

3. Sheth, J. who heard the writ petition No. 2359 of 1975 out of which writ Appeal No. 156 of 1977 arises, followed the decision of the Bench of this Court in W.A. No. 346 of 1973 dated 19-11-1974 and dismissed the writ petition. In that writ Appeal the validity of such a demand was questioned but the Division Bench consisting of Obul Reddi, C.J. and Madhusudan Rao J. upheld the validity of the demand. Even before Sheth J. Sri Srinivasamurthy contended that the decision required reconsideration on the ground that it is not open to the Electricity Board to insist upon the deposit in cash. This argument did not, appeal to the learned Judge, who repelled

it. Sri Srinivasmurthy's appeal to the learned Judge to refer the matter to a Fuller Bench was of no avail and the learned Judge dismissed the Writ petition. Before us Sri Srinivasamurthy raised the same contention. According to him the basis for the Board demanding security is found in first proviso para (a) to Cl.VI in the Schedule to the Indian Electricity Act, 1910 and that proviso does not envisage any cash deposit. What all para (a) of the said first proviso requires is only 'sufficient security'. However, under the terms and conditions framed by the Andhra Pradesh Electricity Board under Section 49 of Electricity (Supply) Act of 1948, Condition 6.7.1 requires every consumer to deposit a sum in cash equivalent to three months' consumption charges based on estimated consumption. The consumers coming under the categories 'domestic' and 'Domestic bulk' are put in different categories as per 6.17.1, Condition 6.17.2 provided for payment of interest at 3% p.a. on such deposit. Condition 6.17.4 says that every consumer, except in the case of consumers under Domestic supply and Domestic Bulk Supply categories, is always required to keep with the Board an amount equivalent to three months' current consumption charges based on the average consumption for the preceding twelve months as consumption deposit. The adequacy of the deposit is reviewed every year. These conditions were redrafted on 20-10-1975 and now condition 28 is the corresponding provision. Condition 28.2 reiterates the same requirement that the consumers, other than those covered under L.T. Category of domestic supply shall always keep with the Board an amount equivalent to charges for three months' average consumption, as consumption deposit. The adequacy of the deposit shall be reviewed by the Board every year on the basis of average consumption for the preceding twelve months. Thus in substance the condition relating to the consumption deposit remains to be the same.

4. The contention of Sri Srinivasamurthy is that the basis for requiring a security is contained in sub-paragraph (a) of first proviso to Clause VI of the Schedule to the Indian Electricity Act which requires only sufficient security,. It is beyond the power of the Electricity Board to convert that concept of 'sufficient security' into cash deposit of an amount representing three months' consumption. He points out that his clients have been very prompt in paying the electricity charges and there has never been any default which would warrant any additional security deposit. After all, security, according to the learned counsel, is needed only to assure payments from the consumers. When the history of the payments of the appellant and the petitioner is examined it is found that they have been very prompt and therefore there is no need to demand additional security. What is worse, according to the learned counsel is the insistence on deposit for three months, that too in cash.

5. As we have pointed out there is a Bench decision of this Court in W.A. No. 346 of 1973 dated 19-11-1974 which has already dealt with this question. That was an appeal preferred against the decision of Chinnappa Reddy, J. in W.P. No. 2122 of 1971. There also the demand for deposit in cash of additional security of charges for three months was challenged. The validity of the provision contained in Condition 6.17.4 was challenged. Chinnappa Reddy, J. dismissed the Writ Petition following the decision of Vaidya J. dated 18-7-1969 in W.P. No. 3468 of 1968. Before Vaidya, J. in the said case it was argued that the insistence on three months' cash deposit was only for the purpose of capital formation and not really intended as security for due payment of the consumption charges. This contention was rejected by the learned Judge holding that the 3 months' cash deposit which was required was really intended as security. This was followed by Chinnappa Reddy, J. in W.P. No. 2122 of 1971. Dealing with the appeal against the decision of Chinnappa Reddy, J., Obul Reddi, C.J. who spoke for the Court observed in W.A. No. 346 of 1973 thus –

"What is now to be seen is whether the Board has power to demand, as security, cash deposit equivalent to three months' average consumption charges. Section 49 of the Electricity (Supply) Act, 1948, empowers the Board to supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and, for the purpose of such supply, frame uniform tariffs. It is by virtue of the power vested in the Board that the Board entered into an agreement with the appellant for supply of electricity. What the Board has now done is to change the terms of the agreement so as to entitle it to demand deposit of security in cash. Another term, which has been altered, is this : Previously, the Board was insisting upon paying two months' average consumption charges and that has now been raised to three months. Under the Indian Electricity Act, the Board is under an obligation to supply electrical energy when a requisition is made by the owner or occupier of any premises..... The Indian Electricity Rules empower the Board to require any consumer to deposit security for the payment of his monthly bills for the energy supplied and for the value of the meter and other apparatus installed on his premises. On deposits over and above a sum of Rs. 25/-, the Board pays interest at the rate of 3% per annum. The rules also provide that the Board shall be at liberty to demand enhanced security deposit from consumers at any time during the life of the contract. It is thus manifest that the Board is vested with the power to demand sufficient security as a guarantee for payment of bills and it is also empowered to raise the security deposit.

"What Mr. Srinivasamurty submits is that a bank guarantee would satisfy the requirements of the rules. In what shape the security should be furnished is a matter purely within the discretion of the Board. It is for the Board to decide whether the bank guarantee would be sufficient security from a consumer or not."

Sri Srinivasamurty urges that this reasoning of the Division Bench is erroneous and is tantamount to conferring unbridled and uncontrolled power on the Board to fix any security deposit which it wanted without any reference to the justifiability of such demand. Neither the Indian Electricity Act nor the Electricity (Supply) Act conferred any such uncontrolled power on the Board. What the Board, according to the learned counsel can demand is only sufficient security. 'Sufficient security' need not necessarily be in the form of security for three months' consumption charges, or payment in cash. It depends upon the circumstances of the case and the need for demanding security should vary from case to case according to the performance of the consumer and the circumstances of the case. That apart, to insist on security for three months' average consumption charges, that too in cash deposit, is highly arbitrary and wholly unwarranted. It is nothing but undue enrichment of the Board at the cost of the consumer which does not serve any useful purpose except adding to the coffers of the Board. There is no reasonable basis for these provisions requiring cash deposit of three months' average consumption charges and the said conditions are highly arbitrary.

6. It is difficult for us to accede to the argument of the learned counsel. It is true that sub-para (a) of the first proviso to clause VI of the Schedule to the Indian Electricity Act speaks only of sufficient security. What is 'Sufficient security' is to be decided by the Electricity Board which

generates electrical power and supplies it to the consumers. Further that power in fixing the tariffs is conferred on the Board under Section 49 of the Electricity (Supply) Act of 1948. It is well settled that the Electricity Board can fix its tariffs and also change them as and when the situation requires. That power of the Board cannot be challenged, and in fact Sri Srinivasamurty does not challenge it before us. What he actually disputes is unbridled power which the Division Bench purports to have conferred on the Electricity Board in fixing the quantum of cash security. The learned counsel takes particular exception to the following observation contained in the Division Bench Judgment :-

"In what shape the security should be furnished is a matter purely within the discretion of the Board. It is for the Board to decide whether the Bank guarantee would be sufficient security from a consumer or not."

7. We do not understand this passage in the same manner as Sri Srinivasamurty construes it. This particular observation of the Division Bench does not say that the Board has unguided, uncontrolled and unbridled power to fix whatever rate of deposit it wants. Undoubtedly whatever security deposit which the Board fixes upon, should be reasonable and should have a reasonable nexus to the requirements of the situation. The Division Bench did not say anything which is contrary to the aforesaid principle. If the security deposit which is required under the conditions by the Board is very unreasonable, certainly it is open to the Court to interfere with it. It is open to the Court to examine the reasonableness or otherwise of the requirement made under the conditions or insisted on by the Board. It is not to preclude a Court of law from examining the reasonableness of the deposit required. As we understand, what all the Division Bench decided was that the Board has power and discretion in what shape the security should be furnished and whether the security should be in the form of a Bank guarantee or a cash deposit.

8. Having made the aforesaid position clear, we will now examine whether the requirement of cash deposit of an amount equivalent to charges for three months' average consumption charges as consumption deposit laid down under the conditions issued by the Board under Section 49 of the 1948 Act is reasonable.

9. The reasonableness of such a requirement is explained by the Board in its counter in W.P. No. 2359/75 out of which W.A. No. 156 of 1977 arises. In the counter it was stated as follows :-

"The consumer is billed for each month separately. The consumers' electricity consumption during the month is billed at the end of the succeeding month and 30 days time is given to him for paying of the bill. If he does not pay the bill his supply is liable to be disconnected after giving one week's notice under Section 24 of the Indian Electricity Act, 1910. Meanwhile he will be consuming the power. So by the time the supply is disconnected to a defaulting consumer he would have consumed energy for 3 months. The Board's interest requires that there should be some protection by way of security of advance payment in respect of the consumption of this three months' period."

This is how the Board sought to explain the reasonableness of the requirement of security representing three months' average consumption charges. Nobody can say that this is

unreasonable. For three months a consumer can go on consuming electrical power without paying any charges. It is therefore eminently reasonable for the Board to require the consumer to furnish security for three months' charges. Therefore, we are satisfied that the requirement of security for three months' consumption charges is reasonable.

10. Then, whether the insistence on cash deposit of such an amount is reasonable or not, will be the next question. Once again we would like to extract from the counter-affidavit a passage relating to this. It is stated :

"The Board is duty bound to conduct its operations on a business like and profit basis. Accordingly it has been stipulating that for a consumer depositing with the Board an amount equivalent to the estimated consumption charges for a period of three months (sic). Even prior to the constitution of the Board this has been the practice. Consumers were also permitted to tender security in form other than cash to give bank guarantee also. In actual practice the Board has found that the procedure of accepting other types of security is giving rise to serious inconvenience and difficulties. The realization of security is at times a lengthy and inconvenient process. There have been cases where the Board has suffered financial injury being unable to realize the security. It has consequently become necessary to insist on cash security."

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, in the circumstances mentioned by the counter and which have been referred to above. It would avoid the Board from incurring any financial injury since cash deposit is available.

11. As a matter of fact it may be that the writ appellant and the writ petitioner before us are prompt in paying their electrical dues, but the Board deals with lakhs and lakhs of consumers and it should have a uniform policy in demanding security. It cannot make a distinction or discrimination from one consumer to another. That is why a uniform policy has been laid down by incorporating it in the conditions aforesaid. For these reasons we are satisfied that the requirement of security for three months' average consumption charges by way of cash deposit is reasonable.

12. However, we must take note of the contention raised by Sri Srinivasamurty on the allegation of undue enrichment of the Electricity Board at the cost of the consumer by insisting on cash deposits. He points out that the Electricity Board itself had floated debentures offering interest at 12% per annum. Now, according to the conditions, it pays only 3% per annum on such deposits. A Bank guarantee would be giving ample safeguard to the interests of the Board; instead the Board is insisting upon a cash deposit, thereby collecting money belonging to the consumer and detaining it with itself. To demonstrate the allegation that the Andhra Pradesh State Electricity

Board wanted the security deposits by way of capital formation or undue enrichment, the learned counsel relies on a letter from the A.P. Electricity Board dated 28-6-68 to the President, Federation of Andhra Pradesh Chambers and Industry. Therein the Board stated that if three months' cash deposit had already been collected in some cases, the Superintending Engineers (operation) have been asked to refund one month deposit by way of adjustment. In all other cases, cash deposit of three months' current consumption charges on the basis of 12 months' average consumption will be collected; that decision of the Board was being implemented and it was not possible to relax further in view of the financial difficulties confronting the Board. Sri Srinivasamurthy's great emphasis is on the reference to the financial difficulties confronting the Board mentioned in its letter of 28-6-68. From this, the learned counsel wants to spell out that the Board, by insisting upon three months' cash deposit, wanted to enrich itself at the cost of the consumer and to improve its financial position. We are afraid we cannot agree with Sri Srinivasamurthy in his understanding of the letter. That was written to the Chamber of Commerce by the Board in reply to a representation that some adjustment should be made with regard to the security deposit. While giving an exemption, the Board pointed out that it was not possible to give larger relaxation because of the financial difficulties which the Board was facing. The Board's refusal to give greater relaxation because of its financial position does not mean that it wanted to enrich itself at the cost of the consumers by insisting upon three months' cash deposit. That letter was written in different context, that too before these conditions which now took shape in the year 1972, were framed. Therefore, we are not prepared to accept the argument of Sri Srinivasamurthy that the insistence on cash deposit of three months' consumption charges is unreasonable.

13. We may here briefly refer to two or three decisions cited by the learned counsel in support of his contention. The first decision is *Nagpur Corporation v. N.E.L. and P. Company*¹ Mudholkar J. speaking for the Court held that a demand for furnishing security before consumer can obtain reconnection is not contemplated by Section 24(1) and cannot properly be made in the notice. But there is nothing in this decision which prevents the Electricity Board from demanding cash security for a period which is demonstrated to be reasonable in the light of the supply, and collection of the electricity charges. The Division Bench did not say anything which takes away the power of the Electricity Board to require security in cash to safeguard its interests and to see that the charges are properly made and that the Board does not incur any loss. Therefore, this decision does not help the learned counsel's contention.

14. In *Nandlal Raj Kishan v. Commr. of Sales Tax Delhi*² security was demanded for payment of sales tax and that was challenged before the Court on the basis of Section 8-A of the Bengal Finance (Sales-tax) (Delhi Amendment) Act, 1956. That Section empowered the Commissioner to impose a requirement that the dealer shall give security upto the amount and in the manner approved by the Commissioner for payment of tax for which he may be or become liable under this Act. What the Supreme Court held was that the said Section 8-A did not give any unlimited or unrestricted power to the Commissioner of Sales Tax, that his power was subject to the condition that it must appear to him to be necessary to demand security for the proper realisation of the tax; the

¹(AIR 1958 Bom, 498)

²(1962) 1 SCR 283

power to levy a tax includes the power to impose reasonable safeguards for collecting it

and demanding security for the proper payment of tax is neither an arbitrary nor an unreasonable restriction. This is precisely what we have observed at the earlier part of our judgement. We have examined the reasonableness of these conditions which require the security and we have already expressed our view that it is pre-eminently reasonable in the circumstances of the case. Therefore, there is nothing in this case which is against the demand of cash deposit of three months' consumption charges.

14-A. The last decision of the Supreme Court is *Pathumma v. State of Kerala*³ wherein it was laid down that any restriction imposed must have a reasonable nexus with the object which is to be served. There is no dispute in regard to this Rule which has been enunciated by the highest Court in the land. What we have stated above would demonstrate that this requirement as to security contained in the conditions has reasonable nexus with the object of collection of electricity charges and of running the Board on sound commercial basis. By no stretch of imagination could it be said that there is no nexus between cash deposit for security and the object for which the Board functions. Thus, the decision relied on by the learned counsel did not subserve the argument which he advanced before us.

15. From the above reasoning it follows that Sri Srinivasamurthy's contention that the consumer should have an option in respect of the payment of electricity charges and that he should not be insisted upon to deposit cash of three months' average consumption charges cannot be accepted. As has been pointed out, cash deposit is necessary in order to run the Board's affairs on a sound commercial basis. We therefore do not see any merits either in the writ appeal or in the writ petition which are accordingly dismissed with costs. Advocate's fee Rs. 150/- in each.

16. Sri Srinivasamurthy makes an oral request for a certificate to enable him to go to the Supreme Court by way of appeal. We see no substantial questions of law of general importance which need be decided by the Supreme Court which arise in this case. Therefore the said request is refused.

17. Sri Srinivasamurthy prays for stay only in the writ appeal and states that for the balance amount of Rupees 20,91,406/- required to be deposited by the Board, the Writ appellant has already given a Bank guarantee of Rupees 20,00,000/-. Therefore according to him there is sufficient security. That Bank guarantee will be valid upto 2-11-79. In view of this sufficient subsisting bank guarantee, there shall be stay for six weeks. No relief regarding stay is sought in the writ petition.

Appeal and petition dismissed.

³(AIR 1978 SC 771)