

# ANDHRA PRADESH HIGH COURT

Southern Steel Ltd

Vs.

A.P. State Electricity Board

W.P. No. 11732 of 1984

(Jeevan Reedy and Neeladri Rao, JJ.)

28.04.1989

## JUDGMENT

### **Jeevan Reddy, J.**

1. Condition 28 of the terms and conditions notified by the A.P. State Electricity Board under Section 49 of the Electricity (Supply) Act, 1948 (hereinafter referred to as 'the Act') provides that every consumer shall deposit with the Board a sum in cash equivalent to estimated three months' consumption charges. According to the petitioners all of whom are High Tension consumers of electricity in the State of Andhra Pradesh - the said condition is unreasonable and arbitrary, and that is the main contention arising herein. W.P. No. 11732 of 1984 and four other writ petitions came up for hearing before a learned single Judge, Y.V. Anjaneyulu, J. He was inclined to agree with the petitioners. The learned Judge was of the opinion that in the circumstances of the case, Board is not justified in framing the said condition, and that a deposit of two months' consumption charges would suffice. But since the learned Judge was faced with earlier Bench decisions of this Court upholding the said and similar conditions, he felt it desirable to refer the matters to a Full Bench. In his order of reference the learned Judge has indicated the reasons for which the earlier Bench decisions ought not to be followed. The learned Judge agreed as well with the other contention raised by the petitioners viz. that condition 28.3 in so far as it provides interest at the rate of 3% per annum on such deposits, is equally unreasonable. He was of the opinion that interest on such deposits should be paid at the same rate as is paid by Scheduled Banks on Fixed Deposits. The learned fudge has given reasons in support of his opinion on this aspect as well.

2. The learned Chief Justice before whom the papers were placed for appropriate orders, thought it fit to post the matter before a Division Bench in the first instance. When the said five writ petitions came up before us, it was represented to us that there are number of writ petitions on the same point, and it would be proper to hear all of them together.

3. The A.P. State Electricity Board' constituted under Section 5 of the Electricity (Supply) Act, is engaged in generation, distribution and supply of electricity in the State. Energy is supplied for industrial, commercial, agricultural, and domestic purposes. To industries using energy above a

particular level, energy is supplied at a higher voltage. They are classified as H.T. Consumers. All the petitioners herein belong to that category.

4. Section 49 empowers the Board to notify terms and conditions upon which it will supply electricity to a person. It is also empowered to frame uniform tariffs in that behalf. Sub-section (2) specifies the factors which must be kept in mind while fixing the uniform tariffs, in that behalf. Sub-section (3) empowers the Board to enter into a special agreement with any consumer, and prescribe different tariffs for him. Sub-section (4), however, creates an obligation upon the Board not to show undue preference to any person while fixing the tariff, and terms and conditions for the supply of electricity. In this case, we are not concerned with special agreements under sub-section (3). All the petitioners are governed by the general terms and conditions notified under Section 49(1). The terms and conditions now in force were notified by the Board in B.P.Ms. No. 690, dt. 17-9-1975. While it is not necessary to refer to the several terms and conditions, it would suffice to note that these terms and conditions, contemplate every consumer executing an agreement in the prescribed form, agreeing to abide by the terms and conditions prevailing on the date of agreement, and also agreeing to be bound by the terms and conditions as may be notified by the Board from time to time; (Condition No. 26). In other words, the Board is empowered to alter the terms and conditions of supply unilaterally; (vide condition No. 25). Condition 32.1 provides, "the Board shall as far as possible within 15 days after the expiration of each calendar month cause to be delivered to every consumer a bill of charges stating the amounts payable by the consumer towards charges for energy supplied and any other sum in connection with supply of energy by the Board"..". Condition 32.2.1 obliges the consumers to pay the amount shown in the bill within 15 days of the date of the bill, in default whereof they are liable to pay "an additional charge of 2% per month or part thereof for the period of delay" in paying the bill. Condition 32.3 empowers the Board to disconnect the supply in case of default in paying the bill, without prejudice to its right to recover the amount due. Condition 24.3 also says that the consumer shall pay to the Board every month the charges for electrical energy supplied to him during the preceding month at the tariff in force from time to time. Condition 28 obliges the consumer to deposit an amount equivalent to three months' consumption charges with the Board. It would be appropriate to set out condition No. 28, omitting the unnecessary portions. It reads :

"28. Consumption deposits :

28.1 : Initial consumption deposit.

28.1.1 : The consumer shall deposit with the Board a sum in cash equivalent to estimated three months' consumption charges. The consumer coming under the L.T. Category 'domestic' shall however pay at Rs. 30.00 per Kilowatt on part thereof connected load :

Provided that the Board may, in the case of industrial; consumers, accept by way of consumption deposit a sum equivalent to two months' consumption charges during a period of three years from the date of first release of supply of electricity.

28.1.2 : In the event of the consumer failing to pay to the Board any sum that may become due for payment to the Board on the dates fixed for payment thereof, the Board may, in addition to and without prejudice to the other rights of the Board, appropriate a part or whole of such deposit towards the sum due from the consumer.

28.2 Additional consumption Deposit:

All consumers other than these L. T. Domestic consumer whose monthly bills are less

than Rs. 500/- for a continuous period of six months, shall keep with the Board an amount equivalent to charges for three months demand and energy charges as consumption deposit. The adequacy of the Consumption Deposit shall be reviewed by the Board usually once in every year and/ or at any time during the year if so warranted due to upward revision of tariffs, enhancement of the contracted demand by the consumer, changes in the pattern of consumption by the consumer, relaxation of power restrictions or such other factors which in the opinion of the Board, warrant review of the adequacy of the existing consumption deposit .....

xx xx xx

#### 28.3 Interest on consumption Deposit:

Interest shall be paid by the Board on deposits of more than Rs. 60-00 made in cash at the rate of 3% per annum or such other rate as may be fixed by the Board from time to time. Full calendar months only shall be taken into account for the purpose of calculating interest and interest shall be calculated to nearest five paise. The interest accruing to the credit of the consumer shall be adjusted every year in the month of April in the electricity supply bills.

#### 28.4: Disconnection for non-payment of Consumption Deposit :

If the consumer does not make payment of amount of consumption deposit or additional consumption deposit or where the deposit is given in Government Security or National Saving Certificate Bank Guarantee etc., he fails to replace them by deposit in cash when so demanded by Board within the notice period of 30 days, supply of the consumer shall be liable for disconnection.

28.5: The Consumption Deposit so calculated as per the Clause 28.1 and/ or 28.2 above shall not be less than three times the monthly minimum charges, applicable to the consumer under the category to which he belongs.

28.6: All consumers shall pay the Consumption Deposit or additional consumption deposit within thirty days from the date of the demand notice. If there be any delay in payment, the consumer shall pay surcharge thereon equal to 1+% per month or such other percentage to be fixed by the Board from time to time, of the demanded amount for each month of delay or part thereof. This will be without prejudice to the Board's right to disconnect supply of electricity."

5. Clause (1) of condition 28 is general in nature. It applies to all consumers. Clause (1.2) enables the Board to appropriate a part or whole of the said deposit towards any amount due to the Board and not paid within the prescribed period. Clause (2) applies to all consumers, except those L.T. Domestic consumers whose monthly bills are less than Rs. 500/- per month for, a continuous period of six months. Such consumers are obliged to keep with the Board an amount equivalent to three months' demand and energy charges, as consumption-deposit. This deposit is liable to be reviewed by the Board from time to time, having regard to the factors mentioned in the said clause. Clause (3) prescribes interest which the Board has to pay on such deposit. It is 3% per annum. Clause (4) empowers the Board to disconnect the supply if consumption deposit/additional consumption deposit, is not made, or is not replaced whenever called upon to

do so. Clause (5) prescribes a certain 'floor' below which consumption deposit shall not go. Clause (6) says that the consumption- deposit, or additional consumption deposit shall be paid within thirty days of the notice demanding such deposit. In default, not only interest is payable but the supply also is liable to be disconnected.

6. The terms and conditions notified in B.P.Ms. 690 dt. 17-9-1975 were issued in supersession of the terms and conditions prevailing on that date, which we shall refer to as "previous conditions of supply". The previous conditions too obliged the consumer to deposit three months' consumption charges in cash, towards security deposit. The said condition was questioned as beyond the competence of the Board in W. P. No. 3468 of 1968, filed by "the Mahalakshmi Glass Works Pvt. Ltd." The said challenge was negatived and the writ petition dismissed by V. K. Vaidya, J. on 18-7-1969. The agreement entered into between the Board and the petitioner therein stipulated that Security Deposit shall be in the form of cash/Post Office National Savings Certificates, or Government Bonds. The choice rested with the consumer, Subsequently, however, the Board altered the Conditions and directed the petitioner to furnish the said security deposit in cash, which was questioned by the consumer as incompetent. Vaidya, J. observed:

"under Section 49 the Board is also empowered to lay down terms and conditions. So, the revised terms and conditions will also override the pre- existing contractual terms and conditions. Under Clause 16 of the General Terms and Conditions and Board is empowered to demand security deposit in cash"" The other argument advanced before, and dealt with by Vaidya, J. is also relevant, since a similar argument is advanced before us also. It is in the following words:

"It was then contended by the learned counsel for the petitioner that the demand of the security in cash is for an ulterior motive because it is with a view to provide capital. The only act and purpose of demanding security is to safeguard the interest of the Board in case the consumer does not pay the charges. The Board cannot demand security in cash so that it may be used in capital formation. Merely because the Board uses the security deposit for purposes of capital formation, it does not mean that it has not accepted the amount by way of security. The amount remains with the Board by way of security and the consumer can always get it back on terms and conditions stipulated. A consumer cannot lay down the manner in which the security has to be used by the Board. I do not see any force in this argument and it therefore fails. I hold that the Board is competent to demand security in the form of cash""

7. A few years later, another industry revived the very same attack in the form of W.P. No. 2122 of 1971 (filed by Chittivalasa Jute Mill Co. Ltd.). It was argued by the counsel for the petitioner therein that the view taken by Vaidya, J. in W.P. No. 3468 of 1968 requires reconsideration. The attack in this writ petition was upon Condition No. 6.17 of the terms and conditions notified by the Board, which obliged the consumer to deposit three months' charges in cash, as security deposit. It was argued that the said condition is unreasonable. The Board justified the reasonableness of the said condition stating "the readings of the meter are taken at the end of the month and by the time the bill is issued to the customer, sometime, say one or two weeks, may

elapse. Thereafter the consumer is given one month's time for payment of the bill. If the bill is not paid, the supply of electricity is not straightway stopped. More often, a warning is given to the consumer before the supply is stopped. All this process takes two to three months. That is the reason why the Board insists on security being given for three months' consumption charges." The learned Judge accepted the said reasons as sufficient to justify the said condition. It was again argued that the security deposit need not be in cash but should be allowed to be furnished in some other form. This argument also was rejected in the following words : "The learned counsel for the Board points out that, where other forms of security are given, the Board is compelled to file suits to recover the amounts. The Board need not accept security in some form which may enable it to realise the amount due to it with certainty at a later date. It is open to the Board to insist on security in a form in which it may be easily realizable. A public utility concern like the Electricity Board cannot launch into litigation all over the State for the purpose of recovery of consumption charges from defaulting consumers. It is, therefore, not unreasonable for the Board to insist upon cash being deposited by way of security....." The learned Judge also rejected the argument of the petitioner that the interest provided on such deposits, viz. 3% is too meagre and unreasonable. The learned Judge pointed out that even in the case of compensation under the Land Acquisition Act the interest payable is 4%, and that even in the case of private landlords and tenants, very often three months' rent is stipulated to be paid in advance, and no interest is paid thereon. The learned Judge observed: "I cannot say that payment of 3% interest is so low that the insistence on cash deposit must be held to be unreasonable."

8. Against the Judgment of Chinnappa Reddy, J. in W.P. No. 2122 of 1971 dt. 12-12-1972, Writ Appeal No. 346 of 1973 was preferred by the petitioner. The Writ Appeal was heard and disposed of by a Division Bench comprising S. Obul Reddy, C.J. and Madhusudan, Rao J. on 19-11-1974. The learned Judge broadly agreed with the views expressed by Chinnappa Reddy, J. Inter alia the Bench observed :

"The Board is empowered under the Act to enter into a contract on such terms and conditions as it thinks fit. Therefore, it cannot be said that the Board has acted in violation of the power vested in it under Section 49 of the Electricity (Supply) Act. All that the appellant can insist upon is supply of electrical energy; but so far as the terms and conditions are concerned, it cannot say that it will receive supply of electricity on its terms. The consumer is bound to accept such terms and conditions as the Board may impose subject, of course, to his right to get supply of electricity ....."

The Bench also observed that the said condition cannot be said to be unrelated to the collection of dues or arrears from a consumer, nor can it be said to be unreasonable.

9. After a few years, the attack was again revived by yet another industry, Andhra Paper Mills, Ltd. in W.P. No. 2359 of 1975. This writ petition came up before S. H. Sheth, J. who dismissed the same on 25-11-1976, following the decision of the Bench in W.A. No. 346 of 1973. The learned Judge refused to be persuaded to refer the matter to a larger Bench. He found no weighty or substantial reasons to disagree with the reasoning of the Division Bench in W.A. No. 346 of 1973. Against the decision of Sheth, J. an appeal being Writ Appeal No. 156 of 1977 was filed by the petitioner in the said writ petition. The said Writ Appeal was heard along with W.P. No. 2224 of 1976 : (reported in AIR 1979 Andhra Pradesh 291) filed by another High Tension

consumer (Krishna Cement Works), by a Division Bench comprising A. Sambasiva Rao, C.J., and P. Ramachandra Raju, J. It was argued by the petitioner-appellant that the judgment of the earlier Division Bench in W.A. No. 346 of 1973 practically confers upon the Board an unbridled and arbitrary power to notify such terms and conditions of supply as it thinks appropriate which, according to the petitioner, was unsustainable in law. This argument was dealt with by Sambasiva Rao, C.J., who spoke for the Bench, in the following words (at p. 294 of AIR):

"We do not understand this passage in the same manner as Sri Srinivasamurthy 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". "emphasis added.

The Bench then took up the question whether the condition requiring three months' cash deposit as consumption deposit, was unreasonable. For this purpose they referred to the following averment in the counter-affidavit filed by the Board (at p.294 of AIR):

"The consumer is billed for each month separately. The consumer's 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 month' period."

The Bench opined that in view of the facts stated by the Board, it cannot be said that the condition requiring three months' consumption charges in cash as consumption deposit, is unreasonable. It observed that for a period of three months a consumer can go on consuming electrical power without paying any charges therefore and, therefore, it was eminently reasonable for the Board to require the consumer to furnish security for three months' charges. It was then argued that the three months' deposit need not be in the form of cash, but can be partly in cash and partly in some other form of security. This argument also was rejected accepting the explanation of the Board that other forms of security have landed the Board in several

difficulties, inconvenience, and protracted litigation. Yet another argument urged before the Division Bench was that the appellant and the petitioner before them were very prompt in paying their bills, and that just because there are some defaulters, it would not be reasonable to punish all the consumers by calling upon them to make three months' cash deposit. The Bench observed (at p.295 of AIR):

"As 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 those reasons we are satisfied that the requirement of security for three months' average consumption charges by way of cash deposit is reasonable."

The Court also rejected the further contention that the payment of a mere 3% interest on such deposit is too meagre and unreasonable. Ultimately, the Bench observed: "From the above reasoning it follows that Sri Srinivasa Murty'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". Accordingly, the writ petition and the Writ Appeal were dismissed. This decision is reported at page 291 of AIR 1979 Andh Pra.

10. Again, after a few years afresh attack is mounted upon the said condition in the form of the present batch of Writ Petitions. It is again argued that condition No. 28, in so far as it requires the consumers to deposit three months' average consumption charges as consumption deposit, is unreasonable and unjustified, and that payment of a mere 3% interest on such deposit is equally unreasonable. According to the petitioners, the decision of the Division Bench in *K.C. Works v. Secretary, APSEB, Vidyut Soudha*<sup>1</sup>, is erroneous and requires reconsideration for the following reasons :

(a)The reasoning of the Division Bench that the previous condition No. 6.7 and the present condition No. 28 is reasonable is based upon an erroneous factual assumption. The Bench accepted the statement in the counter-affidavit filed by the Board that the bill for a month is sent at the end of the succeeding month, and further that thirty days' time is given for paying the bill. On this basis the Bench observed that "for three months consumer can go on consuming electrical power without paying any charges" and held that the said condition is "eminently reasonable". It is pointed out that according to condition No. 32.1, the bill is served within 15 days of the expiration of each calendar month, and further that the bill amount is payable within 15 days of the date of the bill. It is pointed out that the period of 15 days for payment is calculated not from the date of service of the bill, but from the date of the bill. It is also pointed out that a bill can be served even on the very first day of the succeeding month, and it would be payable within 15 days of the date of the bill. In such a situation, it is argued, it is not correct to say that a consumer goes on availing and enjoying energy for a period of three months without

paying for it. It does not exceed six weeks or at any rate, two months, it is submitted. Yet another point urged is that according to condition 32.3 supply of energy can be disconnected without seven days' notice, required by Section 24 of the Indian Electricity Act, 1910. For all these reasons, it is argued that the consumption deposit should in no event exceed two months' average consumption charges; and

(b) the said Bench decision, in so far as it holds that payment of 3% interest by the

<sup>1</sup> AIR 1979 And Prad 291

Board on such deposit is reasonable, is no longer good law in view of the latter decision of the Supreme Court in *M/s. Jagdamba Paper Industries (P.) Ltd. v. H. S. E. Board*<sup>2</sup>, deposits should be paid at the same rate as is paid by the Schedule Banks on Fixed deposits.

11. Besides the above two reasons, it is argued generally that the Board being a 'State' within the meaning of Article 12 has to act reasonably, and that the terms and conditions notified by it under Section 49 ought to be reasonable and fair. Any arbitrary condition, it is argued, would be violative of Article 14 of Constitution and this Court would be entitled to interfere. Support for this proposition is sought to be drawn from the decision of the Supreme Court in *M/s. Jagdamba Paper Industries (P.) Ltd. v. H. S. E. Board*<sup>3</sup>, and also from the recent decision of the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath*<sup>4</sup>,

12. On the other hand, it is contended by Sri V.R. Reddy the learned Standing Counsel for the Electricity Board, that the previous Bench decisions conclude the issue so far as this Court is concerned; that there was no mistaken assumption of facts in the decision in *K. C. Works v. Secretary APSEB, Vidyut Soudha*<sup>5</sup>, and that even if there is any such factual error, it does not effect the merits or the principle of the decision. It is pointed out that, notwithstanding Condition 32.3 seven days' notice is obligatory under Section 24 of the Indian Electricity Act, 1910 before effecting disconnection, which would mean that at least for a period of two months and 7 days a consumer would be availing and enjoying the electricity without paying for it. He further submits that condition No.28 provides not for security deposit but for consumption deposit. Both are not the same, he says. It is true that consumption deposit is mainly security deposit, but that is not its only content or object. Counsel explains that the Electricity Board generates energy and supplies it to the consumers for a period of more than two months, on credit. For generating electricity, it undergoes huge expense, for which purpose it is obliged to incur loans from several bodies. It has to pay interest on such loans. The Board has, therefore, taken this aspect also into consideration while issuing condition No. 28. The Court too should take note of this aspect, which goes to justify the said condition. Learned counsel brings to our notice the following averments in the counter-affidavit filed by the Board :

" . . . . . The normal billing for a consumer is one month. After the expiry of each billing period the bill is prepared and sent to the consumer within 15 days (see condition 32.1). Under the terms and conditions of supply consumers have to remit the bill amount within 15 days. If payment is not made within the time allowed a surcharge for delayed payment becomes payable. The Board has in addition armed itself with the power to disconnect supply where there is default in payment. Disconnection involves considerable

hardship to the consumer and so it is not resorted to as a matter of course immediately a default occurs. Only when there is persistent default resort is had to this course. Hasty disconnections may be frustrating to consumers and excessive resort to this coercive procedure may lead to malpractices and be self-defeating in the long run. It may sometimes be that the consumer defaults due to oversight or some difficulty. In such cases the arrears are

<sup>2</sup> AIR 1983 SC 1296

<sup>4</sup> AIR 1986 SC 1571

<sup>3</sup> AIR 1983 SC 1296

<sup>5</sup> AIR 1979 And Pra 291

carried over to the next bill. Further, the default of any consumer is not noticed the very moment the period allowed for payment expires. The payments are usually remitted at the offices set up by the Board or sent through cheques or drafts. Necessary entries in the consumer's ledger are made after sometime. When these are periodically checked by the relevant official, non-payment comes to light. A verification is to be made and if in any case it is desired to effect disconnection, an intimation will be given by the Accounts Department to the concerned Assistant Engineer and disconnection is thereafter effected, if meanwhile no payment is made. Prior to this, however, one week's notice has to be given. Sometime elapses between every one of these stages. During this time the consumer is continuing to avail supply and further dues accumulate. These dues will usually be in excess of three months charges. Having regard to this system, from practical experience it has been found that a stipulation for a deposit of three months charges is the minimum protection required for the Board. A requirement like this is also not oppressive to the consumer. In this context it may be borne in mind that the Board expends large monies to manufacture electricity and the supply is on credit, i.e., goods are first supplied over a month and then price collected. The rates charged seldom cover even the production cost. Because the supply of electricity is not a mere business in goods but also the provision of a public amenity, while sound business principles have to be adopted the charges are fixed not with a view to earn the maximum profit but to keep the institution going, after taking into account the subsidies given by the State Government. The Board requires huge sums as rotating capital. It also borrows large amounts from organisations like the L.I.C. and Banks. The entire activity of the Board is for the benefit of consumers of electricity and it is well entitled to require consumers to cooperate by paying their bills regularly, by giving security deposits and by conforming to the terms and conditions of supply. More than a decade ago, consumers were permitted to give security as cash or by way of Bank guarantees or Government Bonds or other Government securities. This procedure was found in actual practice to be irksome and inconvenient. When there was default and the security has to be enforced considerable delays occurred. Even Banks took their own time to comply with their guarantees and in some cases this Board was constrained to launch legal proceedings to enforce these guarantees. While the Board is not desirous of inconveniencing consumers, it cannot prejudice its interests to assist consumers. All the major consumers are availing electricity for conducting business operations with a view to earn large profits and there is no warrant for imperilling the interests of a public body like the Board to facilitate the self-interest of some consumers.

The Board has therefore prescribed a statutory term for provision of security in the form of cash. This term is well within its statutory power is reasonable and does not conflict with any provision of law'.."

13. Before we proceed to deal with the rival contentions, it would be appropriate to notice the scope of judicial scrutiny by this Court in such matters. Acting under Article 226 of the Constitution, this Court does not sit as an appellate authority over the Electricity Board. Indeed, the Act has not chosen to provide an appeal against the terms and conditions under Section 49. The jurisdiction exercised by this Court under Article 226 is supervisory in nature. It is to ensure the observance of fundamental right the rule of law, and to keep the authorities within their bounds. Undoubtedly, the Electricity Board is a 'State' within the meaning of Article 12, and hence it is subject to Parts III and IV of the Constitution. The scope of enquiry, therefore, would be to examine whether the power conferred upon the Board by Section 49 of the Act has been exercised so unreasonably and arbitrarily that interference by this Court is called for.

14. For the purpose of this enquiry it is not necessary for us to go into the question whether the terms and conditions notified under Section 49 are statutory in nature or not. We shall proceed on the assumption that they are not statutory. We shall also proceed on the assumption that the terms and conditions notified under Section 49 ought to be reasonable, in the sense that they must be related to the object and purpose for which they are issued. We are equally aware that the power under Section 49 cannot be allowed to be used for oblique purposes, or for purposes unrelated to the one sought to be achieved by a given condition. Bearing the above principles in mind and the scope of judicial scrutiny by this Court in such matters, we proceed to deal with the rival contentions.

15. What is the object behind condition No. 28 ? That is the first question to be answered. A reading of condition No. 28 shows that the primary purpose behind the said condition is prompt realisation of the amounts due to the Board. The amounts due to the Board normally include the monthly consumption charges. Whenever any amount falls due to the Board and is not paid within the period prescribed therefor, an equivalent amount out of the consumption deposit is appropriated towards that amount. The consumer will thereafter be called upon to make good the deficit in the consumption deposit. Consumption deposit is calculated on the basis of, and is tacked on to the average monthly consumption. This amount is subject to revision from time to time and, at any rate, once every year, having regard to the revision in tariffs, enhancement of the contracted demand by the consumer, changes in the pattern of consumption by the consumer, relaxation of the power restrictions, or such other factors as may, in the opinion of the Board, warrant review of the adequacy of the existing consumption deposit. It also provides that where the consumer fails to make the consumption deposit, or the additional consumption deposit, or fails to make up the deficit when so demanded by the Board, supply of energy shall be stopped. The previous condition, corresponding to condition No. 28, was condition 6.7. It also appears from the Judgment of this Court referred to above that, at an earlier point of time, it was clause/condition 16. At all points of time thus, the requirement was deposit of three months' average consumption charges. At any rate, from 1968, it appears the requirement was that the deposit should be in the form of cash. The challenge to the said condition has been mounted from time to time, commencing from 1968, and at all points of time it has been negatived. It is not as if the only *raison d'etre* for the said condition is that for three months a consumer can go on

consuming electrical power without paying for it. That may be one of the reasons assigned in one of the judgments upholding it, but that is not the only reason. This was not the reason for which the said condition was upheld by the Bench comprising S.Obul Reddi, C. J. and Madhusudan Rao, J. in Writ Appeal No. 346 of 1973, nor was it the reason for which the condition was upheld by Chinnappa Reddy, J. in W. P. No. 2122 of 1971, or by V. K. Vaidya, J. in W.P. No. 3468 of 1978. We cannot ignore or dismiss the several reasons stated in the counter-affidavit of the Board which we have quoted in extenso hereinabove. It is true that, according to condition 32, the bill for monthly consumption charges has to be delivered to every consumer within 15 days of the expiration of that particular month. Condition 32.1 itself employs the expression "as far as possible". It is thus clear that the said condition is merely directory. It may be that in a given case the bill is served on the very next day of the expiration of the month; but, it may also happen that in another case it may be served a month later. For that reason, the bill does not become bad, or unenforceable. It is equally true that the consumer is given 15 days time for paying up the bill amount and condition 32.3 says that if the bill amount is not so paid supply of energy may be stopped on the expiry of the 15 days without further notice under Section 24 of the Indian Electricity Act, 1910. But this is what the conditions provide. These conditions merely refer to the power of the Board. Existence of power is distinct from exercise of power. A strict compliance with condition 32.3 is neither practicable nor realistic. The Board cannot blindly act upon condition 32.3 and disconnect the supply the moment 15 days' time (from the date of the bill) expires. It too has to take a realistic view of the situation. After all, these industries are engaged in production of goods essential to the community. A blind and mechanical adherence to condition 32.3 (instant disconnection) may indeed prove counterproductive in larger sense, as rightly pointed out in the counter-affidavit of the Board. The counter specifically states "disconnection involves considerable hardship to the consumer and so it is not resorted to as a matter of course immediately a default occurs. Only when there is persistent defaults, resort is had to this course. Hasty disconnections may be frustrating to consumers and excessive resort to this coercive procedure may lead to malpractices and be self-defeating in the long run. It may sometimes be that the consumer defaults due to oversight or some difficulty. In such cases the arrears are carried over to the next bill". We see no reason why we should ignore this realistic approach and assessment of the situation. The Board has further pointed out that the non-payment is not immediately noticed, that having regard to the number of consumers and the extensive nature of the organisation, it takes some time for the default to be noticed and action to be initiated in that behalf. Though condition 32.3 says that the supply of energy can be stopped without giving notice contemplated by Section 24 of the Indian Electricity Act, 1910, the counter rightly states that the requirement of Section 24 has got to be observed by the Board, since a condition notified under Section 49 cannot override the specific requirement of the statute. The counter further states that having regard to all these circumstances, the "dues will usually be in excess of three months' charges" and proceeds to state further that "having regard to this system from practical experience it has been found that a stipulation for a deposit of three months charges is the minimum protection required for the Board". There is no material before us to show that the aforesaid facts stated in the counter are not true, and that in every case the Board is disconnecting the supply on the very next day of the expiry of 15 days from the date of bill.

16. It is also stated by the Board that huge sums are required by it as rotating capital; that it borrows large amounts from organisations like L.I.C. and Banks; that it pays interest to them, and that in such circumstances it is well entitled to require the consumer to co-operate by paying their bills regularly, by giving security deposits, and by conforming to the terms and conditions of

supply. It is argued that this consideration was also one of the basis of condition No. 28. We do not think it necessary to express any opinion on this question, though the truth of the matter cannot be denied. There are two views upon the matter. The petitioners say that the interest burden should be reflected in the tariffs, while the Board says that interest burden can be reflected in consumption deposits, and not necessarily in tariffs. All that we can say is that there is no hard and fast rule in this behalf. The interest burden can be reflected either in tariffs, or can be sought to be set off by calling upon the consumers to make deposits. In this case, however, it is unnecessary to go into this aspect, since the requirement of three months' deposit, in our opinion, cannot be said to be unreasonable and unjustified having regard to the facts mentioned above. It cannot be said that the said condition is so unreasonable and arbitrary' as to call for interference by this Court under Article 226 of the Constitution. We reiterate that even if this court comes to the conclusion that the deposit should not be 3 months, but 2 months 7 days, or 2+ months, it would not be entitled to interfere in the matter, not being an appellate authority. It cannot substitute its own opinion for the opinion of the Board. It can interfere only when the exercise of power is shown to be arbitrary, and unrelated to the object sought to be achieved. Learned counsel for the Board, indeed, agrees with the proposition that the Board has to act reasonably. He gave an illustration rightly in our opinion, where the Board would say that such deposit should be equal to the annual consumption charges. He points out that in such a situation, it would cease to be consumption deposit. Such a condition would be unrelated to the object underlying consumption deposit, viz. securing prompt payment of monthly bills and other amounts due to the Board. It would cease to be consumption deposit and would become contribution, it can no longer be called consumption deposit. Not that we are saying that this Court will not interfere unless such extreme situation arises. What we are emphasizing is that a slight difference of opinion as to the basis of calculation of such deposit would not entitle this court to interfere, or to amend the conditions of supply. Now take an ordinary case. For the whole month the consumer avails energy without paying for it. The bill is served, normally speaking, within about 15 days of the expiry of the month. Another 15 days is given for payment of the bill amount. If it is not paid a 7 days notice has to be given as required by Section 24 of the 1910 Act. All this takes 2 months 7 days. Apart from this, there are the practical difficulties stated in the counter-affidavit. The Board says that it takes some time for it to discover the default and that at any rate, no immediate disconnection is effected mechanically, but that a realistic approach is adopted and the amount is included in the next month's bill. It is pointed out that only when the default is repeated, would they resort to disconnection. All this would bring the three months' deposit perfectly within the realm of reasonableness. It cannot be termed as arbitrary or unreasonable, nor can it be said that the said requirement is unrelated to the object for which the said condition was issued.

17. Since we are satisfied on the material placed before us that condition 28.1 is reasonable and cannot be termed as arbitrary, or disproportionately high, we do not think it necessary to analyse the judgment of this court in *K. C. Works v. Secretary, APSEB Vidyut Soudha*<sup>6</sup>, As we have stated above it is not the only judgment upholding the reasonableness of such condition there have been number of previous judgments to the same effect. We refuse to be drawn into an agreement relating to the correctness of the factual basis of the said decision. We are not sitting in judgment over that decision. If we look broadly at the principle of the said decision, it clearly indicates that this court will interfere only where the condition "is very unreasonable", but not otherwise. The aforesaid decision is not the one that creates the liability. The liability was created by condition No.28. The decision, which is one of the several decisions upholding such a condition, merely

refuses to quash it. Even if there is any error in the factual basis of the said decision, it is no ground for us to declare condition 28 as bad. We are entitled to examine the reasonableness of the said condition ourselves, and that is precisely what we

65 AIR 1979 Andh Pra 291

have done hereinabove. We may in this connection refer to the decision of the Supreme Court in *M/s. Jagdamba Paper Industries (P) Ltd. v. H. S. E. Board*<sup>7</sup>, Clause 22 of the Standard Contract prescribed by the Haryana State Electricity Board provided for security deposit to be made by the consumer. The security deposit was, however, not calculated with reference to, nor was it based upon the monthly consumption charges. It was calculated on an altogether different basis viz. on the basis of each KW of connected load. After the contract was entered into, tariff was enhanced almost by four-times. Consequently, Board also enhanced the amount of security deposit. On calculation it was found that the security deposit demanded by the Board was equal to the energy bill of "two months or little more". It was upheld by the Court. While doing so, the Supreme Court pointed out "once we reach the conclusion that the Board has the power to unilaterally revise the conditions of supply, it must follow that the demand of higher additional security for payment of energy bills is unassailable, provided that the power is not exercised arbitrarily or unreasonably." Counsel for the petitioners want us to read the last words in the said extract as entitling this court to sit as an appellate authority over the decision of the Board. We are not prepared to agree. The said words cannot be read or understood in the manner suggested by the petitioners. The Supreme Court merely recognised the power of this Court to interdict where the power is exercised unreasonably or arbitrarily, but it does not mean that this court would substitute its own opinion for the opinion of the Board merely because it thinks that instead of three months' deposit it should be 2 months 7 days, or 2+ months, as the case may be. The said observation is not an authority for the proposition that this Court should ignore the nature of the power under Article 226 and convert itself into an appellate forum over the Board.

18. Now coming to the other argument, viz. the reasonableness of the rate of interest provided by condition 28.3 on such deposits (3% per annum), there are two Bench decisions of this Court upholding its reasonable ness, i.e., the decision in W. A. No. 346/ 1973 dated 19-11-1974; and the decision in *K.C. Works v. Secretary, APSEB Vidyut Soudha*<sup>9</sup>, They are binding upon us. It is, however, argued that the said decisions are no longer good law in view of the decision of the Supreme Court in *M/s. Jagdamba Paper Industries (P.) Ltd. v. H. S. E. Board*<sup>10</sup>, The question is whether it is so. The entire reliance of the petitioners' counsel is upon paragraph 11 of the judgment in *Jagdamba Paper Industries*, AIR 1983 Supreme Court 1296, which paragraph reads as follows :

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

The petitioner's counsel say that the said paragraph amounts to a decision of the Supreme Court declaring that payment of any interest below the rate of interest paid by Scheduled Banks on

Fixed Deposits is impermissible. On the other hand, the Board's counsel says

<sup>8</sup> AIR 1983 SC 1296

<sup>10</sup> AIR 1983 SC 1296

<sup>9</sup> AIR 1979 AND PRA 291

that the said paragraph 11 cannot be read as a decision. According to him, it was a case where the Court's suggestion was accepted by the Board, and thereupon it was, not necessary for the Court to render a decision. This position really confronts us with a delicate and difficult situation. After giving our earnest consideration, we are of the opinion that the said paragraph cannot be read as a decision of the Supreme Court on the basis of which we can declare that the earlier Bench decisions of this Court are no longer binding. In this view of the matter, we reject the contention relating to reasonableness of the rate of interest provided by condition 28.3, inasmuch as it is concluded by earlier Bench decisions of this Court.

19. During the course of arguments, one of the counsel suggested that the Board has been following a discriminatory practice, inasmuch as it is insisting only upon two months consumption deposit in cash in the case of power intensive units. Reliance is placed upon Clause (i) of paragraph 7 of the counter-affidavit, where it is stated "even though three months' consumption deposit is payable, the Electricity Board has shown some concession to the power intensive units by asking them to pay only two months' consumption deposit in cash and furnish Bank guarantee for the third month, since they are consuming huge blocks of power and since they have to pay large amounts by way of consumption deposit in cash. From March 1982 the Board was insisting and collecting two months' consumption deposit and one month's consumption deposit by way of bank-guarantee from all power intensive units". The submission of the counsel was that this distinction is not provided by the terms and conditions notified by the Board, and that such a favor shown to power intensive units is discriminatory as illegal. Though there appears to be some substance in this grievance, it is not possible for us to make any declaration, or give any direction in this behalf without hearing the affected parties. All that we can say is that the terms and conditions have to be obeyed and followed by all concerned, including the Board.

20. Mr. S. Parvatha Rao brought to our notice the terms and conditions notified by Tamil Nadu Electricity Board in 1977, according to which the security deposit in the case of H. T. consumers is equivalent to 1+ times the average monthly consumption of the preceding 12 months. He also brought to our notice the terms and conditions notified by the Maharashtra Electricity Board relating to security deposit, which provide for security deposits at varying rates; in the case of consumers whose monthly bill is Rs. 1000/- it is three months; in the case of consumers whose monthly bill is between Rs. 1000/- and Rs. 5000/- it is two months; in the case of consumers whose monthly bill is between Rs. 5000/- and Rs. 25,000/- it is one month. In the case of consumers whose monthly bill is above Rs. 25,000/- it is even less than one month. The top-bracket comprises those consumers whose monthly bill is Rs. 2 lakhs. In their case the security deposit is 70% of the estimated monthly bill, subject to a minimum of Rs. 1,60,000/-. We do not see any relevance of the terms and conditions notified by other Electricity Boards on the question of reasonableness of the conditions notified by the A. P. State Electricity Board. Each Electricity Board may have its own policy and procedures, and it would not be proper to just pick out one condition and compare it with the corresponding condition notified by the A. P. Board. The petitioners have not placed before us all the terms and conditions notified by the Tamil Nadu, or Maharashtra Electricity Board and, therefore, it is not possible for us to compare or contrast the conditions relating to security deposit notified by those Boards with condition No. 28 notified by

the A. P. Board and say that the latter condition is unreasonable.

21. For the above reasons, the writ petitions fail and are accordingly dismissed. There shall be no order as to costs.

22. It is, however, brought to our notice that last year there was a severe power-cut. The power-cut for H. T. consumers was up to 60% or more. Even this year, it is submitted, the power-cut has been reimposed in spite of a good monsoon. It is submitted that this power-cut is playing havoc with the petitioners' very subsistence and survival. We can quite understand this problem. It is also submitted that for raising the cash to make the additional one month's deposit, the petitioners will have to approach Banks or other financial institutions, and raise loans at a very high rate of interest which, it is submitted, in the present circumstances casts a severe and unbearable burden upon the petitioners. Having regard to these special facts, and in particular the fact that both for the last year as well as the current year, severe power-cut has been imposed by the Electricity Board for H. T. consumers, we direct that the petitioners shall furnish, consumption deposit, in cash, only in a sum equivalent to two months' average monthly consumption charges (as per the formula prescribed in condition 28) forthwith, if not already furnished. The extra one month's deposit shall be in the form of bank-guarantee to the satisfaction of the Electricity Board. This arrangement shall be for a period of one year. The Bank guarantee shall be furnished effective from 1-5-1989 and ending with 30-4-1990. Bank guarantees shall be furnished within three weeks from today. Before the expiry of the said period i.e. on or before 30-4-1990, the petitioners shall deposit cash in lieu of bank guarantee representing one month's monthly consumption charges so as to comply fully with condition No. 28.

Order accordingly.