

RAJASTHAN HIGH COURT

B.R. Oil Mills

Vs.

Asstt. Engineer

Civil Writ Petn. No. 162 of 1972

(Mahendra Bhushan, J.)

22.01.1980

ORDER

Mahendra Bhushan, J.

1. This is a petition under Article 226 of the Constitution of India for a writ of mandamus or a direction or order with a prayer that the order of the respondents (Annexure-1) repeated in Annexure-5 be quashed and the non-petitioner (1) be restrained by a rule of this Court from executing the order (Annexure-3) of non-petitioner (2), and further that the non-petitioner be restrained from disconnecting the supply of energy to the petitioner so long as the petitioner makes the payment of electricity charges consumed by him.

2. M/s. B.R. Oil Mills, petitioner, is a registered partnership concern carrying on business at Bharatpur and extracts oil from oil seeds by the machinery fixed in it. The petitioner is a high tension consumer of the non-petitioner (2), and he applied to the non-petitioners for providing the high tension power in the year 1962. The same was provided to the petitioner and the petitioner is regularly paying the amount as per bills for the electricity consumed by him, and it is not disputed by the non-petitioners. The petitioner furnished National Saving Certificates of the value of Rs. 5,000/towards security for making the payment of monthly electricity bills received by him. However, the non-petitioner (1) asked the petitioner in the year 1969 by its letter dated December 6, 1969 (Annexure-1) to deposit in cash the security equivalent to estimated consumption charges for one month amounting to Rupees 14,557/- and further required the petitioner to furnish a bank guarantee in the sum of Rs. 29,103/- being the estimate of consumption charges for two months. There was exchange of correspondence in between the parties, and the petitioner did not deposit the cash

amount and also did not furnish the bank guarantee. Thereupon, a notice (Annexure-4) was served on the petitioner calling upon him to furnish the cash security as well as bank guarantee, as aforesaid, failing which his connection was to be disconnected without any further notice. The petition was filed in this court on October 12, 1972.

3. The order of the non-petitioners has been challenged by the petitioner on the grounds, (1) that in the year 1962 when energy was supplied to the petitioner, the petitioner was required to furnish security in the form of National Saving Certificates of the value of Rupees 5,000/-, which he furnished, and, therefore, the non-petitioners cannot unilaterally now require the petitioner to furnish cash security and security in the form of bank guarantee as aforesaid; and (2) that a decision of the board calling upon the petitioner to furnish security on 3 months estimated consumption charges (in the form of cash of 1 month's estimated consumption charges and in the form of bank guarantee for two months estimated consumption charges) is unreasonable, more so, when the petitioner never defaulted in making regular payments of the electricity consumption by him: (3) that no powers are vested in the non-petitioners under Section 24 of the Indian Electricity Act, 1910 (hereinafter referred to as the Act of 1910), to disconnect the connection in case the security as desired was not furnished because the amount of security cannot be said to be a sum due from the petitioner to the non-petitioners, and (4) that the matter should have been referred to arbitration under Section 24 (2) of the Act of 1910, because the petitioner had raised the dispute and made the demand to refer the dispute to arbitration, as per terms of clause 30 of the agreement.

4. In reply to the writ petition, it has been submitted on behalf of the non-petitioners that under the general conditions of supply and scale of miscellaneous charges relating to the supply of electricity by the Rajasthan State Electricity Board (hereinafter referred to as the Regulation) framed under Section 49 read with Section 79(j) of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Supply Act), the petitioner was bound to furnish security under Regulation 20 of the Regulations on three months estimated consumption charges and the continuation of supply of energy was conditional on the petitioner's furnishing security deposits. Because the petitioner failed to furnish the security, he is not entitled to the continuation of energy and the Board has a right to disconnect the energy connection. It has been further stated that security is necessary for ensuring regular payment, and if the payment is not made, the amount of the bill may be adjusted against the security deposit as laid down in clause

(a) of Regulation 20. It is further stated that the office order (Annexure-3) only prescribes the mode of furnishing security. An affidavit was filed on behalf of the non-petitioner (2) of Shri K.L. Bapna, Superintending Engineer on 15-1-1980, a copy of which was furnished to the petitioner. But, no rejoinder has been filed. An affidavit was filed to show that the demand of security is reasonable.

5. I have first to see, as to whether there is any legislative sanction behind the powers of the Board to order a consumer to furnish security or not? The provisions of the Supply Act are in addition to the provisions of the Act of 1910, Power is vested in the Board, which has all the powers and obligation of the licensee under the Act of 1910 by virtue of Section 26 of the Supply Act to call upon the consumer to furnish sufficient security. What is 'sufficient security' within the meaning of that clause is to be decided by the Board, and the Court can only look into, as to whether the security is reasonable or not? Under Section 49 of the Supply Act, the Board has to supply electricity to any person upon such terms and conditions, as it thinks fit, and may for the purpose of such supply form uniform tariffs. Section 79 of the Supply Act deals with the powers of the Board to make regulations and under sub-clause (j) of this section, the Board has powers to make regulations providing principles governing the supply of electricity by the Board to persons other than licensees under Section 49. The regulations were framed by the Board under these powers and a consumer is only entitled and the Board has an obligation to supply energy to the consumer, upon such terms and conditions, as laid down in the regulations, including Regulation 20, which deals with security, Regulation 20, so far as relevant for the present purposes is as follows:-

"20 agreement and security :-

(a) Before commencing the work the Board may require any intending consumer to enter into a formal contract and to deposit security as per schedule of charges for the payment of energy to be supplied and for the value of the meter and other apparatus installed on his premises. The intending consumer shall at the time he makes payment of the estimated cost of service line etc., comply with such requirement within fourteen days after the service of notice by the Board on this behalf. The security will be returned at the termination of the contract.

(b) In the event of no formal contract having been entered into between the Board and the consumer the latter after once the supply of electricity has

commenced shall be bound by terms and conditions of supply herein contained. The consumer shall not refuse to tender an agreement if so required by the Board, at any time after the supply is commenced, notwithstanding that the same was not entered into before the supply was commenced. In such an event of the date of commencement of contract shall be the date of commencement of supply to the consumer.

(c), (d), (e) (f) and (g)- not relevant for the present purposes."

6. Part II of the Regulations contains schedule of Service and Miscellaneous charges and security so far as it is relevant, it is reproduced as follows :-

"Security Deposits :-

(b) Motive Power :- Rs. 15/- per BHP of connected load or part thereof or three months' estimated consumption charges whichever is higher.

(ii) No interest will be paid by the Board on the security deposits.

To my mind, a reading together of clause (6) first proviso (a) of the schedule to the Act of 1910 along with Regulation No. 20 of the Regulations framed under Section 49 read with Section 79(j) of the Supply Act gives legislative sanction to the Board to demand security from the consumers, as given in the schedule of service and miscellaneous charges, reproduced above. It may also be mentioned here that in a place where the regulations have not been framed by virtue of power vested in the Board under Section 49 read with Section 79(j) of the Supply Act, model form of draft conditions of the supply (Annexure - 7) (under Rule 27 of the Electricity Rules, 1957) will apply, and even in that model form there is a provision of demanding security contained in clause (14) of the model conditions. I am, therefore, of the opinion that the Board had powers to frame regulations demanding security from the petitioner and other consumers.

7. No agreement has been produced on behalf of the petitioner, and it is not the case of the petitioner that any agreement was entered into between the petitioner and the non-petitioner at the time when the electric connection for high tension was given to the petitioner. Even if no agreement has been entered between a consumer and the Board by virtue of Regulation 20(b) of the Regulations, once the supply of electricity has commenced the consumer is bound by the terms and conditions of supply contained in the Regulations. It was, therefore, necessary for the petitioner to have complied with

the regulations and furnish security, as demanded by the non-petitioners. In *Kistna Cement Works, Tadepalli v. The Secretary, APSEB, Vidut Soudha, Hyderabad*¹ almost a similar question arose as to whether the Board could demand security from the consumers on three months estimated consumption charges. In case of one of the petitioners, in that case the amount equivalent to charges for three months came to Rs. 31,85,406/-. Placing reliance on the other reported cases of the same High Court, it was held that the Board is within its right in demanding additional security in cash representing three months consumption from the consumers of electricity power in addition to initial consumption deposits already paid, and such power was derived by the Board by virtue of Section 49 of the Supply Act. The observations of Obul Reddy, C.J., who spoke for the Court in (1974) W.A. No. 346 of 1973, as follows were quoted with approval :-

"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, framed 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 to change the terms of the agreement is to entitle 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 of 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 from consumers at any xxxx 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 is also empowered to raise the security deposit".

8. The learned Advocate for the petitioner seeks to distinguish this authority on the ground that it was held to be reasonable, because on the deposits interest at the rate of 3% was to be paid, and there was a rule empowering the Board to demand additional security. I will later on deal with the argument as to whether the demand of three months estimated consumption charges by way of security (one month's estimated consumption charges in cash and two months estimated consumption charges in the form of bank security) is reasonable or not, but I have already reproduced Rule 20 and the schedule under which the security is to be demanded. It is not a question of demanding additional security under the regulations, but a question of demanding proper security under the schedule to the regulations. It can, therefore, be said that the Board has powers to make regulations also providing therein that a consumer will have to give security on the estimated consumption charges on three months. I have already said above that the petitioner has failed to show that the security in the form of National Saving Certificates to the value of Rs. 5,000/- was furnished by him under an agreement. Even if the petitioner had earlier furnished security in the form of National Saving Certificates of the value of Rs. 5,000/-, he is bound to furnish security by virtue of Regulation 20 of the Regulations read with the Schedule. The petitioner has only a right of supply of energy upon furnishing sufficient security as provided under the regulations framed by the Board under Section 49 read with Section 79 (j) of the Supply Act. Therefore, it cannot be said that the demand by the Board of the Security from the petitioner has no legislative sanction. Firstly, the question of unilaterally changing the condition of the agreement so far as the demand of security is concerned does not arise in the facts and circumstances of the case, and secondly, the Board is demanding the security under the regulations, as aforesaid, and the petitioner is bound by them.

9. In Cement Works case (supra), it has been held that the Court can only examine the reasonableness or otherwise of the amount of security demanded by the Board. It will be useful to quote the observations from that case, which are to the following effect :-

"In 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 necessity by the Board. It is not to preclude a Court of law from examining the reasonableness of the deposit required."

In that case, the explanation furnished about the reasonableness of the demand of security was held to be sufficient, I have already said above that on behalf of the respondent an affidavit of the Superintending Engineer (Commercial), non-petitioner No. 2 was filed on 15-1-1980. A look at this affidavit will show that generally the readings for the consumption of electricity made by the consumers in a month are taken after a period of one month, and then the bills are prepared and dispatched to the consumers, which takes about 15 to 18 days time. Thus, by way of illustration, it can be said that for the electricity consumed during the month of December, 1979, the reading is taken on or about 1st of January, 1980. The bills are received by the consumers by 18th of January and are payable in about 17 days time, i.e., are payable by the 2nd of February. If they are not paid, then under Section 24 of the Act of 1910, 7 days notice for disconnection is required and only thereafter if the bills remain unpaid, the electric connection can be disconnected. It can, therefore, be said that for the electricity consumed, the payment is made in about two months or so, and the disconnection can only be effected after about two and a half months. Electricity is not such a commodity which is purchased in the market against ready cash. It is consumed in advance and thereafter the payment is made. It can, therefore, be said that the demand of security on the estimated consumption charges for three months cannot be said to be unreasonable. In the present case, though the schedule provided demanding security in cash on three months estimated consumption charges, but later on the Board perhaps considered the difficulties of the consumers and changed the mode of security under Annexure-3 dated 8-2-1966. It was provided under Annexure-3 that only one month's estimated consumption charges are to be taken in cash as security, and two months estimated charges are to be taken in the form of bank security, but in no case the amount of cash security shall exceed Rs. 10,000/- unless the average of 3 months consumption is less than that. To my mind, Annexure-3 only gives a facility to the consumers to pay security in cash on one month estimated consumption charges, and two months estimated consumption charges by way of bank security. It is not disputed that so far as the petitioner is concerned, the average monthly charges of electricity consumed by him come to Rs. 14,557/-. Therefore, the demand of cash security to that amount and bank guarantee to the double of the amount is in accordance with the regulations and cannot be said to be unreasonable in the facts and circumstances of this case. It is submitted by the learned Advocate for the petitioner that no interest is to be paid on the cash and security amount and on that account the demand is unreasonable. But I have already said above that the bill for

electricity charges for a particular month is sent after the electricity has been consumed, and under these circumstances merely because on the cash security deposit of one month, no interest is paid, it cannot be said to be unreasonable.

10. It is further contended by the learned Advocate for the petitioner that the petitioner only furnished National Saving Certificates of the value of Rs. 5,000/- by way of security and had called upon the non-petitioner to encash the same and to recover the balance, if any. The non-petitioner did not encash the certificates and wants to hold the same and demand fresh cash security to the tune of Rs. 14,557/-, and this stand of the non-petitioners is not reasonable. I have been taken through the correspondence exchanged between the parties in that connection. The stand of the non-petitioners was that under rules, they cannot encash the National Savings Certificates, which were only pledged with them, whereas the stand of the petitioner was that they could be encashed, as the non-petitioner had been authorized to encash them. There is no documentary evidence on record that the postal authorities were willing to encash the certificates under the present conditions. The conduct of the petitioner appears to be that he first sought time for paying the balance of the amount and also to furnish the bank guarantee, but for one reason or the other gained time after time and did not comply with the order calling upon the petitioner to furnish security and then came to this Court. The petitioner could very well deposit the balance of the amount minus Rs. 5,000/-, which were with the non-petitioners in the shape of National Saving Certificates to show his bona fides. At any rate, Mr. H.P. Gupta for the non-petitioners undertakes that as and when the amount of security in cash is deposited and bank guarantee is furnished, the National Saving Certificates of the value of Rs. 5,000/- will be returned to the petitioner within 7 days. Merely because the non-petitioner did not encash or could not encash the National Saving Certificates, it cannot be said that the demand of cash security and in the form of bank guarantee under the regulations is unreasonable.

11. It is contended by the learned Advocate for the petitioner that even if the petitioner failed to furnish the security, the non-petitioners have no right to disconnect the energy connection of the petitioner under Section 24 of the Act of 1910, because that section will only apply where a person neglects to pay any charges for energy or any sum other than a charge for energy, due from that person to a licensee. According to him, the amount of security deposit cannot be said to be a sum due to the non-petitioners from the petitioner, and, therefore, under Section 24 the connection cannot be ordered

to be disconnected. I have already said above that under regulation 20 of the Regulations, the consumer is bound to furnish security, and the supply of energy is conditional on the consumer furnishing security. The amount of security is legally payable and, therefore, can be said to be a sum due to the non-petitioners. Apart from this, under clause (6) (2nd proviso) to the schedule to Act of 1910, the licensee is entitled to discontinue the supply, in case the owner or occupier of the property to which the supply is made has not given security, or if the security given is invalid or insufficient. The Board is only bound to supply energy upon such terms and conditions as it thinks fit and as provided in the regulations. The petitioner had only a right to the regular supply of the energy and its continuation, if he pays security as per the regulations. If the petitioner invokes the equitable writ jurisdiction of this Court, he is to comply with the regulations, pay the security amount, and having failed to do so, he is not entitled to any relief from this Court.

12. I do not find any force that the matter was such which should have been referred to arbitration to the Electric Inspector in the facts and circumstances of this Case.

13. There is no force in this writ petition and it is hereby dismissed. The petitioner shall pay Rs. 100/- as costs to the non-petitioners of this writ petition.

Petition dismissed.

Cases Referred.

1. (AIR 1979 And Pra 291)