

Adoni Ginning Factory And Ors. vs Secretary, Andhra Pradesh Electricity ... on 14 February, 1979

Equivalent citations: AIR1979SC1511, (1979)4SCC560, 1979(11)UJ464(SC), AIR 1979 SUPREME COURT 1511, 1979 UJ (SC) 464 1979 (4) SCC 560, 1979 (4) SCC 560

Author: O. Chinnappa Reddy

Bench: D.A. Desai, O. Chinnappa Reddy

JUDGMENT

O. Chinnappa Reddy, J.

1. These (two appeals arise out of a batch of Writ Petitions which are allowed by a learned Single Judge of the High Court of Andhra Pradesh, but, which, on appeal) were dismissed by a Division Bench of that Court. The appellants were consumers of high and low tension electrical energy which was being supplied to them under agreements with the Government of Andhra Pradesh Dy. G O. No. 187 dated 30-1-1955, the Government of Andhra Pradesh, purporting to act in exercise of its power under Section 3 of the Essential Articles Control and Requisitioning (Temporary Powers) Act, enhanced the rates of supply of electrical energy over and above the contracted rates. Several persons, including the appellants in the two appeals filed Writ Petitions in the High Court of Andhra Pradesh challenging the validity of G O. No. 187 dated 30th January, 1955. Pending disposal of the Writ Petitions they obtained stay of collection of enhanced charges. The Writ Petitions were 6relly allowed by Satyanarayana Raju, J., on 22nd February, 1957, and G.O. No. 187 dated 30th January, 1955 was struck down. The Government of Andhra Pradesh preferred appeals under Clause 15 of the Letters Patent. The appeals were allowed by a Division Bench of the High Court on 19th December, 1958 and, G.O. No. 187 dated 30th January, 1955 was upheld. After the appeals were allowed by the Division Bench, the Andhra Pradesh State Electricity Board, to whom the Government had transferred the Electricity Undertakings with effect from 1st April, 1959, issued bills to the several consumers calling upon them to pay the arrears of enhanced charges. At this stage the consumers were not called upon to pay any surcharge on the arrears. Some of the consumers, including the present appellants, filed appeals in the Supreme Court and on 10th August, 1959, obtained orders of injunction restraining the Government from realising from them the "amount of arrears occasioned by the enhancement of rates". The injunction was subject to the condition that they offered security for such amount of arrears, intimation of which was directed to be given to them by the Government. There was no injunction restraining the Government from collecting future charges at the enhanced rates. The Andhra Pradesh State Electricity Board to whom (as we mentioned earlier) the Government had transferred its Electricity Undertaking duly issued bills to the consumers specifying separately the total amount (including arrears) which had to be paid at the enhanced

rates, the amount which the consumer had necessarily to pay in view of the orders of the Supreme Court and the amount of arrears. Each consumer was expressly told that if his contentions were eventually rejected by the Supreme Court he would have to pay the amount of arrears with surcharge thereon calculated at two per cent per month. Two per cent was mistakenly mentioned for one per cent, Though the appellants and others were thus expressly put on notice of the claim of the Electricity Board for payment of surcharge in the event of the appellants failing in their appeals in the Supreme Court, the appellants did not seek to get any clarification from the Supreme Court. The Supreme Court ultimately dismissed all the appeals on 25th March, 1964. Thereafter, the Electricity Board called upon the appellants and other consumers to pay surcharge at the rate of twelve per cent per annum on the arrears in regard to which they had obtained order of injunction during the pendency of the appeals in the Supreme Court. Once again, the appellants and others filed Writ Petitions in the High Court questioning the demand of the Electricity Board for payment of surcharge. The Writ petitions were allowed by a learned single Judge of the High Court on the ground that no surcharge was leviable for the period during which the order of injunction passed by the Supreme Court was in operation. The Andhra Pradesh State Electricity Board preferred appeals under Clause 15 of the Letters Patent. They were allowed by a Division Bench first on the ground that the Andhra Pradesh Electricity Board was not bound by the injunction granted against the Government of Andhra Pradesh, and, second, of the ground that in any case, the injunction did not prevent the consumers from paying enhanced charge and that if they failed to pay enhanced charges they were under an obligation to pay surcharge under the terms of the agreement. A few of the consumers have preferred these two appeals to this Court.

2. Shri S.T. Desai and Shri Naunitlal, learned Counsel for the appellants argued that the appellants could not be penalized for non-payment of enhanced charges in the face of the order of injunction obtained by them. They argued that the view of the injunction no default had been committed by them. It was also said that the levy of surcharge was penal in nature and could not be enforced. It was further argued that the bills issued to them after the decision of Division Bench of the High Court did not call upon them to pay the arrears and, therefore, there was no question of their becoming liable to pay any surcharge.

3. We do not see any substance in any of the submissions advanced on behalf of the appellants. The provision for payment of surcharge is contained in Clause 9 of the agreement. The relevant paragraph of Clause 9 is as follows: Every consumer shall pay the bill amount within thirty date of receipt of the Bill. In default of such payment, he shall pay; an additional charge of one percent on the amount of the bill for every month of delay or part thereof.

4. The very rate of levy of surcharge stipulated in the agreement, namely, one percent per mensem i.e. twelve percent per annum is a clear indication that the levy is not meant to be a penalty but is a provision for interest by way of compensation for delayed payment. There is, therefore, no question of relieving the appellants against any penalty.

5. The primary submission of the learned Counsel was that there was no default on the part of the appellants in view of the injunction granted by the Supreme Court. We are unable to agree. The injunction granted by the Court restrained the Government from realising the arrears of enhanced

charges. For the purposes of these appeals we may proceed on the assumption that the order of injunction bound the Electricity Board also. All that the injunction did was to restrain the Board from realising the arrears which meant that the Board was restrained from taking any coercive action such as disconnection of supply of electricity etc. for the realisation of the arrears. The operation of S D. No. 187 dated 30th January, 1955, as such, was not stayed. Thus the obligation of the consumers to pay charges at the enhanced rates was not suspended though the Electricity Board was prevented from realising the arrears. It was up to the consumers to pay or not to pay the arrears. If they paid the arrears they relieved themselves against the liability to pay surcharge. If they did not pay the arrears they were bound to pay the surcharge if they failed in the appeals before the Supreme Court. This was precisely what was pointed out by the Electricity Board in the Bills issued to the consumers after the Supreme Court granted the injunction. We may mention here that the Electricity Board is not demanding any surcharge on the arrears for the period during which the Andhra Pradesh High Court had granted stay. It was explained by the learned Counsel for the Electricity Board that no surcharges was claimed for that period as the operation of G.O. No. 181 dated 30th January, 1955 had itself been stayed at that time. Surcharge was claimed for the period during which the Supreme Court did not stay the operation of G.O. No. 187 but only restrained the Board from collecting the arrears. That no stay of G.O. No. 187 was ever intended to be granted by the Supreme Court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charges at the enhanced rates. The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the Writ Petitions and writ appeals were pending in the High Court.

6. The submission that the bills issued by the Electricity Board did not call upon the appellants and others to pay the arrears is entirely without substance. Each of the bills mentions the total amount payable, including the arrears. The bills separately mentions the amount which the consumer may pay in view of the orders of the Supreme Court. The bill also mentions the amount of arrears which would have to be paid if the appeals were to be eventually rejected by the Supreme Court. The bill also informs the consumers that in the event of the rejection of the appeals by the Supreme Court surcharge will have to be paid. It is impossible to hold that the consumers were not called upon to pay the arrears. In the result both the appeals are dismissed with costs.

7. It was brought to our notice that in Civil Appeal No. 292 of 1970, the respondent Electricity Board was set ex-parte for failure to pay the requisite Court fee on the statement of case. The order of the Registrar is recalled and the respondent is permitted to pay the requisite court fee on the statement of the case.