

Jagadamba Paper Industries (Pvt.) Ltd. ... vs Haryana State Electricity Board & Ors. ... on 29 September, 1983

Equivalent citations: 1983 AIR 1296, 1984 SCR (1) 165, AIR 1983 SUPREME COURT 1296, 1983 (4) SCC 508

Author: Misra Rangnath

Bench: Misra Rangnath, Amarendra Nath Sen

PETITIONER:

JAGADAMBA PAPER INDUSTRIES (PVT.) LTD. ETC. ETC.

Vs.

RESPONDENT:

HARYANA STATE ELECTRICITY BOARD & ORS. ETC.

DATE OF JUDGMENT 29/09/1983

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

SEN, AMARENDRA NATH (J)

CITATION:

1983 AIR 1296

1984 SCR (1) 165

1983 SCC (4) 508

1983 SCALE (2) 1008

CITATOR INFO :

R 1988 SC 985 (8)

R 1990 SC 1851 (36)

ACT:

Indian Electricity (Supply) Act, 1948 , Sections 39(1) read with clauses 22 and 31 of the Standard Contract Agreement to supply electricity-Power of the Board to amend, revise and change schedule of tariff and charges and conditions of supply of electricity-Whether the power can be assailed so long it is not exercised arbitrarily or unreasonably-Sub-para (a) of the first proviso to clause VI of the Indian Electricity Act, 1910, scope of.

HEADNOTE:

From 1968, the Haryana State Electricity Board has been collecting security from every consumer to ensure timely

clearance of energy bills and in the case of industrial consumers the security was worked out at Rs. 30 per KW. With effect from 1st April 1981, the amount was changed to Rs. 100 per KW. Similarly in regard to the industrial meter a different basis has been adopted and from April 1, 1981 the security deposit now varies between Rs. 5,000 and Rs. 10,000 in regard to industrial consumers. The petitioners have therefore, challenged the said unilateral increase on the ground that the enhancement is without any justification.

Dismissing the petitions, the Court

HELD: 1. To contend that the Electricity (Supply) Act, 1948 and the Rules made thereunder do not contemplate any provision for security for the timely payment of energy charges is not correct. Sub-para (a) of the first proviso to clause VI of the schedule to the Indian Electricity Act, 1910 would be applicable and what would be sufficient security should be left to the Electricity Board to decide. [171 E-F]

Krishna Cement Works v. The Secretary APSEB, AIR 1979 AP 291 approved. M/s. B. R. Oil Mills v. Assistant Engineer (D) (RSEB), Bharatpur & Anr., AIR 1981 Raj. 108; and M/s. Goodyear India Ltd. v. H.S.E.B. & Ors. CW. 4765/81 dated 9.4.82 Pb. & Haryana H.C. referred to Modi Industries Ltd. (Steel Section) v. U.P. State Electricity Board AIR 1979 All. 375; M/s. Devidayal Metal Industries v. The Municipal Corporation for Greater Bombay & Anr. AIR 1980 Bom. 154 distinguished.

2:1 Section 49(1) of the Indian Electricity (Supply) Act, 1948 clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit. In exercise of this power the Board
166

had initially introduced the condition regarding security and each of the petitioners had accepted the term. The Board has been conferred statutory power under s. 49(1) of the Act to determine the conditions on the basis of which supply is to be made. This Court in Bisra Stone Lime Company Ltd. & Anr. Etc. v. Orissa State Electricity Board & Anr., [1976] 2 SCR 307., took the view that enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applied to the tariff would equally apply to the security, that being a condition in the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time of entering into their respective supply agreements. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck down as being without jurisdiction.

[172 G-H; E-F]

2:2 Under clause 31 of the Agreement the Board reserved to itself the right to amend, cancel or add to any of the schedules and conditions at any time. The provisions of this

clause are similar to clause 13 of the agreement which came to be considered in Bisra Lime Stone Company's case (supra). Therefore, the Board had authority under the agreement itself to amend the conditions. In exercise of that power the Board has now raised the additional demand. [173 A-B]

2:3. It is true that the affairs of the Boards in the different States of the country are not upto the expectation of the consumers and there have been instances which give rise to genuine anguish and dissatisfaction. The scheme of the Act clearly indicates a legislative mandate that the Board should manage its commercial activities in such a way that it does not make any loss. It is also clear that the Board being a public utility organisation is not expected to make any undue profit by abusing its monopoly position. An inbuilt system of control and supervision has been set up and the State Governments have been given power to give policy directions. Situation seems to have arisen when stricter control and supervision are called for and if organisational changes and provision for greater control appear necessary, to improve the functioning of the Boards, steps should be taken without delay in this regard. The Board should always remember that it is a public utility service and not a governmental agency enjoying wide powers and expected to have a share in the governance of the country. On the facts placed that the stand of the Board that a demand equal to the energy bill of two months or a little more is not unreasonable,) when 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.

[173 E-H; 174 A-B]

3:1. The argument that the security should be in the shape of Bank guarantee does not call for consideration, in view of the acceptance of the court's, suggestion to increase the interest @ 10% per annum on per with the interest payable by the Scheduled Banks. 174 E; C]

3:2. In regard to the enhanced security for the meter the explanation advanced by the Board is that the meters are required to be replaced or many

167

costly parts have to be substituted by way of repair. In view of the High cost of the meters the Board is justified in enhancing the security. Petitioners have not disputed their obligation to furnish security for the meter. But the challenge is to the enhancement. Indisputably all the meters to the petitioning consumers have been supplied prior to the decision to enhance the security. Keeping in view the likelihood of replacement or substantial repair, the court suggested that the escalation may be reduced by 50% to which the Board has accepted. The Board undertook to evolve a new formula accordingly and introduce it from 1-10-83 and not to enforce the rates impugned.

JUDGMENT :

ORIGINAL JURISDICTION: Writ Petition No. 4167-68, 7346- 53, 7689-97, 8638, 8640-41, 9899 of 1982, 910-912 of 1983, 7987-91 of 1982 and 29, 1642 of 1983.

(Under article 32 of the Constitution) AND Civil Appeals Nos. 2464-65 of 1982.

Appeals by Special leave from the Judgment and Order dated the 9th April, 1982 of the Punjab and Haryana High Court in C.P. Nos. 4805 and 5184 of 1981.

For the appearing Petitioners/Appellants:

S.B. Bhasme, B.R. Kapur, S.R. Srivastava, C.P. Mittal, D.B. Vohra, K.G. Bhagat, Vimal Dave, Ms. Kailash Mehta, A.K. Goel and Sarva Mitter.

For Respondent:

Parmod Dayal, K.K. Jain and A.D. Sanger. The Judgment of the Court was delivered by RANGANATH MISRA, J.: Each of these writ petitions is by a consumer of electric energy which has entered into a contract with the Haryana State Electricity Board ('Board' for short), and challenge in these petitions under Article 32 of the Constitution is to the enhancement of security unilaterally made by the Board both in respect of meter as also for the payment of the energy dues. Clause 22 of the standard contract stipulates:

"22. Security Deposit:

(a) Before commencing or resuming supply to a consumer the Board may require the consumer to lodge with the Board as security for the payment by the consumer of his monthly bills and for the value of the meters and/or other apparatus belonging to the Board and installed at the consumer's premises a deposit, which may not be transferable, calculated as follows:-

Rs. 10.00 per KW of connected load or part thereof in the case of domestic; Rs. 20 per KW of connected load or part thereof in case of commercial and Rs. 30 per KW of connected load or part thereof in case of industrial/agricultural/bulk supply/street lighting consumers plus the following amount per meter:-

- | | | |
|-----|------------------------------|-----|
| (1) | ... | ... |
| (2) | ... | ... |
| (3) | ... | ... |
| (4) | For medium industrial supply | |

| | |
|------------------------------------|------------|
| and bulk supply above 20 KW | |
| and up to 100 KW. | Rs. 100.00 |
| (5) For industrial and bulk supply | |
| above 100 KW. | Rs. 200.00 |

The security is obtainable in cash and an interest at the rate of 4% per annum shall be payable on security deposits of Rs. 50.00 and above. No interest will be payable if a connection is disconnected within a year of giving supply.

(b) The Board will be at liberty at any time to demand further security deposit from consumers who have habitually defaulted in making payments of their monthly dues."

Clause 31 provides:

"31. Rights of Board to revise schedules of tariffs and charges and conditions of supply: Subject to clause 30 above (relating to interpretation) the Board reserves the right at any time to amend, cancel, or add to, any of these schedules and conditions."

Each of the contracts contains detailed provisions for security deposit as provided under clause 22. The Board enhanced the tariff by almost four times but the enhancement of tariff has not been challenged by the consumers, who have filed these writ petitions. Thereafter the Board decided in October 1980 that with effect from April 1, 1981, the security contemplated under clause 22 both in regard to the meter as also for due payment of the energy bills should be enhanced and fixed a new schedule. Challenge in these petitions is to the enhancement in regard to both the meter as also security for due payment of energy bills made unilaterally by the Board. As this is the common question arising in all these writ petitions, they are being disposed of by a common judgment.

The petitioning consumers have contended that the enhancement made in the security amount towards the meter is without any justification. It is all the more so where meters have been installed several years before and there is no change in the circumstances justifying an enhancement in the security deposit for it. Challenge is also advanced against the enhancement of the security deposit in the matter of payment of energy bills. From 1968 the Board had introduced the condition of taking a security from every consumer to ensure timely clearance of energy bills and in the case of industrial consumers the security was worked out at Rs. 30 per KW. With effect from April 1, 1981, in place of Rs. 30 per KW Rs. 100 per KW has been substituted. It is contended that on account of this enhancement most of the petitioning consumers have been called upon to furnish additional security to the tune of several lakhs of rupees. Similarly in regard to the meter a different basis has been adopted and from April 1, 1981, the security deposit now varies between Rs. 5000 and Rs. 10,000 in regard to industrial consumers. After the enhancement came into force the Board through its prescribed officers called upon the petitioning consumers to make additional security deposits on both counts, within a time indicated.

According to the petitioners the Electricity (Supply) Act, 1948 ('Act' for short) and the Rules made thereunder do not contemplate any provision of security for the timely payment of energy charges.

The Board has not framed any Regulations under s. 79 of the Act for demanding security of the type in issue. According to the petitioners as the supply is controlled under an agreement entered into between the Board and the petitioning consumers, unilateral escalation would be contrary to any acceptable notion of contract. Reliance is placed on behalf of the petitioners on the decision of the Allahabad High Court in *Modi Industries Ltd. (Steel Section) v. U.P. State Electricity Board*, and that of the Bombay High Court in *M/s. Devidayal Metal Industries v. The Municipal Corporation for Greater Bombay and Anr.* Before the Allahabad High Court it was contended by the consumer that the Board contracted with it to supply 9500 KW electrical energy. The rate schedule applicable to the consumer was HV-2. Under the agreement of December 31, 1970, the consumer had deposited with the Board a sum of Rs. 3,44,135 as security. The Board demanded a further security of Rs. 9,00,000. The consumer took the plea before the High Court that neither under the Indian Electricity Act, 1910 ('1910 Act' for short), nor the Act and the agreement for supply between the parties was the Board authorised to demand additional security. The Board took the plea that the tariff had gone up from time to time and the then existing rate schedule was of 1974. Normally the meter reading was done after every 30 days or once in 30 days and it took about 15 to 20 days thereafter to prepare the bill and to send it to the consumer. A further period of 15 days was allowed to the consumer to make the payment. Seven days' disconnection notice after expiry of the due period was to be given to the consumer. It took 2 or 3 days thereafter to verify the accounts and take steps for disconnection on the ground of non-payment, of the energy bill. Thus a period of about 3 months was necessary to collect the energy bills from the date of consumption. In order to safeguard the financial interest of the Board a sum equal to energy bill for three months on the average was demanded as security. Reliance was placed on clause VI of the Schedule to the 1910 Act for authorising the Board to rise the additional demand of security. The Court took the view that clause VI of the Schedule to the 1910 Act had no application and came to the conclusion:

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

A learned single Judge of the Bombay High Court without referring to the Allahabad decision came to the conclusion that the scheme of the Act made it clear that it was not open to the licenser to impose any financial burden in addition to what was provided for in the Act itself. If this were not so, the whole object of the Act, which is to ensure the supply of electricity to the consumers in a controlled manner at rates which have to be controlled and approved by the State Government would be destroyed. Because, in addition to the electricity charges, the licenser may, by contract, provide for other charges and thus impose a greater financial burden on the consumer than contemplated in the Act itself. As against these decisions, reliance has been placed on a Bench decision of the Andhra Pradesh High Court in *Krishna Cement Works v. The Secretary, APSEB* and a single Judge decision of the Rajasthan High Court in *M/s. B.R. Oil Mills v. Assistant Engineer (D), RSEB, Bharatpur and Anr.*, on behalf of the Board in support of the demand of security. The Andhra

Pradesh High Court has taken the view that sub-para (a) of the first proviso to clause VI of the Schedule to the 1910 Act would be applicable and what would be sufficient security should be left to the Board to decide. The Andhra Pradesh Electricity Board had adopted similar justification as placed by the Board before us to justify demand of enhanced security and dealing with such stand the learned Judge observed:

"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..."

The Rajasthan High Court has accepted the view of the Andhra Pradesh High Court. We accept the view of the Andhra Pradesh High Court.

Counsel for the Board has also placed before us a Division Bench decision of the Punjab and Haryana High Court in *M/s. Goodyear India Ltd. v. Haryana State Electricity Board and Others*, where the decision of the Andhra Pradesh and Rajasthan High Courts have been followed. We have been told that against that decision of the Punjab and Haryana High Court appeals have been preferred to this Court.

We are of the view that the Board has been conferred statutory power under s. 49(1) of the Act to determine the conditions on the basis of which supply is to be made. This Court in *Bisra Stone Lime Company Ltd. & Anr. etc. v. Orissa State Electricity Board & Anr.*, took the view that enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applied to the tariff would equally apply to the security, that being a condition in the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time of entering into their respective supply agreements. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck down as being without jurisdiction. Section 49(1) of the Act clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit. In exercise of this power the Board had initially introduced the condition regarding security and each of the petitioners had accepted the term.

Under clause 31 of the agreement the Board reserved to itself the right to amend, cancel or add to any of the schedules and conditions at any time. The provisions of this clause are similar to clause 13 of the agreement which came to be considered in *Bisra Lime Stone Company's* case (*supra*). We are, therefore, inclined to take the view that the Board had authority under the agreement itself to amend the conditions. In exercise of that power the Board has now raised the additional demand. We have already taken note of the fact that there has been a steep escalation in the tariff. Counsel for the Board placed before us a statement which indicates that while tariff has gone up almost four

times, the demand for security raised by the Board is much less-it is a little more than two times of the original security.

On behalf of some of the petitioners it was contended that the security should represent the average energy bill for one month. It was claimed that the Legislature has set up the Board as an autonomous body with large powers and providing scope to act purely with a view to creating an effective public utility service. The Board should not be permitted to act either arbitrarily or capriciously; nor should it manage its affairs in a disorderly way and taking advantage of its monopoly status pass on the incidence of such vice to be shared by the consumers. We share the concern of the petitioners and their counsel that the affairs of the Boards in the different States of the country are not upto the expectation of the consumers and there have been instances which give rise to genuine anguish and dissatisfaction. The scheme of the Act clearly indicates a legislative mandate that the Board should manage its commercial activities in such a way that it does not make any loss. It is also clear that the Board being a public utility organisation is not expected to make any undue profit by abusing its monopoly position. An inbuilt system of control and supervision has been set up and the State Governments have been given power to give policy directions. Situation seems to have arisen when stricter control and supervision are called for and if organisational changes and provision for greater control appear necessary, to improve the functioning of the Boards, steps should be taken without delay in this regard. The Board should always remember that it is a public utility service and not a governmental agency enjoying wide powers and expected to have a share in the governance of the country.

We agree, however, on the facts placed that the stand of the Board that a demand equal to the energy bill of two months or a little more is not unreasonable. Once we reach the conclusion that the Board has 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.

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.

Once that is done, the argument that the security should be in the shape of Bank Guarantee does not call for consideration.

In regard to the enhanced security for the meter the explanation advanced by the Board is that the meters are required to be replaced or many costly parts have to be substituted by way of repair. In view of the high cost of the meters the Board is justified in enhancing the security. Petitioners have not disputed their obligation to furnish security for the meter. But the challenge is to the enhancement. Indisputably all the meters to the petitioning consumers have been supplied prior to the decision to enhance the security. Keeping in view the likelihood of replacement or substantial

repair, we suggested to learned counsel for the Board that the escalation may be reduced by 50%, i.e. in place of the enhanced demand varying between Rs. 5,000 and Rs. 10,000, it should be limited to Rs. 2,500 and Rs. 5,000. Learned counsel has agreed that steps would be taken by the Board to evolve a formula by which the demand for security for the meter would be revised being limited to Rs. 2,500 at the minimum and Rs. 5,000 at the maximum in regard to industrial meters in respect of which the demand now is between Rs. 5,000 and Rs. 10,000. It would, therefore, follow that the Board would not enforce its decision in regard to escalation of the meter security until the new formula is evolved and it will be open for the Board to ask for additional security effective from October 1, 1983, in accordance with the new formula towards security for the meter.

We make no Order as to costs.

S.R.

Petitions dismissed.