

CASE NO.:
Appeal (civil) 1019 of 2006

PETITIONER:
M.P. State Electricity Board & Anr

RESPONDENT:
Grasim Industries Ltd

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1019 OF 2006
[With Civil Appeal Nos.1026/2006, 1027/2006, 1028/2006,
1031/2006, 1029/2006, 1030/2006, 1032/2006, 1033/2006,
1034/2006 and 3223 of 2006]

Dr. ARIJIT PASAYAT, J.

1. In each of the appeals challenge is to the order passed by a Division Bench of the Madhya Pradesh High Court, Indore Bench, in Letters Patent Appeals/writ petitions filed by the respondents in each case. CA nos.1033 and 1034 of 2006 have been filed with leave to file special leave petition. It is to be noted that while allowing the writ petitions filed, the High Court placed reliance on the judgment rendered in the Letters Patent Appeal filed under clause 10 of the Letters Patent by Grasim Cement, Raipur, i.e. LPA 20207 of 1997. In the cases where the Letters Patent Appeals were filed, learned Single Judge had decided in favour of the appellant-Board.

2. Challenge in the writ petitions filed, which were decided related to the illegality of action taken by the appellant-Board in deleting Clauses 21(f) & 21(g) of the Board's General Conditions for Supply of Electrical Energy and The Sale of Miscellaneous and General Charges. These related to agreement for payment of interest on security deposits. The notification is dated 24.1.1996. Learned Single Judge in the cases which were subject matter of the Letters Patent Appeal held that such a course was permissible. Reliance for the purpose was placed on a decision of this Court in Ferro Alloys Corpn. Ltd. V. A.P. State Electricity Board and Anr. (1993 Supp (4) SCC 136). While deciding the appeals and the writ petitions, the Division Bench held that the view of the learned Single Judge is not correct and for the purpose relied on paragraph 158 of the judgment in Ferro Alloys case (supra).

3. Mr. C.S. Vaidyanathan, learned senior counsel for the appellant-Board submitted that the Division Bench read only a part of paragraph 158 of the judgment and not the relevant part which empowers the Board to delete such a condition.

4. It is submitted that notification dated 24/1/1996 was issued in exercise of powers conferred under Section 49 of the Electricity (Supply) Act, 1948 (in short the 'Supply Act').

5. Learned counsel for the respondent, on the other hand, observed that this Court categorically in paragraph 158 noted the lack of power to delete the condition relating to payability of interest on security deposits.

6. It is to be noticed that in Ferroy Alloys case (supra), this Court was dealing with two categories of consumers in different States. One category related to Boards' regulations for the States of Andhra Pradesh, Uttar Pradesh and Bihar, where there was provision for payment of interest. In respect of some other States such as, Rajasthan and Orissa, there was no such provision. This Court in paragraphs 143 and 145 held that where there is no provision for payment of interest, the same is not illegal. We are not concerned with that category of cases.

7. Since the fate of these appeals primarily depends upon the view expressed by this Court in Ferro Alloys case (supra) at paragraph 158, this paragraph needs to be noticed. The same reads as follows:

"In view of the above finding, upholding the clause relating to non-payment of interest, for example, Rajasthan and Orissa, what is to happen to such of those cases where interest is provided like Andhra Pradesh, Uttar Pradesh and Bihar? In all those cases wherever the Electricity Boards have framed a provision for payment of interest after adjusting its finances at a stated rate they cannot be allowed to delete such a clause. The provision for interest has been made by the various Boards having regard to the overall budgetary and financial position and further, keeping in view the quantum and mode of security deposit and billing and recovery practice. Nor again, could the Board withhold payment of interest on the basis of this judgment. However, if there is any change in the circumstances affecting the budgetary and financial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case."

(Underlined for emphasis)

8. Indisputably a bare reading of paragraph 158 quoted above shows that it is permissible for the Board to take a decision relating to the desirability for payment of interest on security deposits or otherwise.

9. Each of the Electricity Boards before us is a State within the meaning of Article 12 of the Constitution of India. The Boards are different from licensees. Each of the Boards has framed its own terms and conditions of supply. One such condition relates to security deposits. Such a deposit varies from Board to Board. For example, under the terms and conditions notified by Andhra Pradesh Electricity Board under Condition No. 28.1.1, the consumer is required to deposit with the Board a sum in cash equivalent to estimated three months consumption charges. In the case of Rajasthan, the security is in the form of cash for one month and bank or insurance guarantee for two months.

10. The legislative sanction behind the power of the Board to direct a consumer to furnish security may be examined. It has already been seen that the Supply Act is complementary to the Electricity Act, 1910. Section 26 of the Supply Act states that the Board shall have all the powers and obligations of a licensee under the Electricity Act. And this shall be deemed to be a licence of the Board for the purpose of the Act. Under the regulations framed by the Board in exercise of powers of Section 49 read with Section 79(j) the 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. If, therefore, the regulations prescribed a security deposit that will have to be complied with. It also requires to be noticed under Clause (6) of Schedule II of the Electricity Act that the requisition for supply of energy by the Board is to be made under proviso (a) after a written contract is duly executed with sufficient security. This, together with the regulations stated above, would be enough to clothe it with legal sanction. In cases where regulations have not been made Rule 27 of the Rules made under the Electricity Act enables the adoption of model form of draft conditions of supply. Annexure VI in Clause 14 states that the licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed in his premises. Thus, the Board has the power to make regulations to demand security from the consumers.

11. The next question will be: what is the object in demanding security? The deposit though called security deposit is really an adjustable advance payment of consumption charges. The payment is in terms of the agreement interpreting the conditions of supply. This security deposit is revisable from time to time on the basis of average consumption charges depending upon the actual consumption over a period. This is the position under the terms of supply of energy with reference to all the Boards.

12. For supply of electricity the Board needs finance for production, supply and other charges necessary for supply of electricity. For this purpose, it takes loans from various financial institutions. This is best illustrated if one looks at the transactions of Punjab Electricity Board where electric energy is generated through hydro as well as thermal plants for ultimate sale to the consumers. Of the total power generated about 50 per cent is through hydro plants. The remaining energy is generated through thermal power plants which are operated on coal/oil. Due to limited hydro resources within the State of Punjab the dependency on power on thermal plants is on the increase. The present requirement for working of thermal plants is more than 52 lakh tonnes of coal per annum. In addition, 60 thousand kilo litre of furnace oil is required. The coal companies/Coal India Limited together with major suppliers or power plant like M/s. BHEL demand cost of coal/spares/ projects in advance for the supply of material. The Board is also required to purchase power from Central projects N.T.P.C., N.H.P.C. in order to meet the demand for power by the consumers. For purchase of such power again advance payments are made by the Board. On such advances the Board is not paid interest. The effect is, the Board is obliged to bear the liability of hundreds of crores of rupees per annum. It has no option but to pay the charges and deposits in order to keep the power available at a level to meet with the demand of the consumers. It is the case of the Board that it has opened letters of credit by making advance deposits in favour of National Thermal Power Corporation and the suppliers. Coal

India Limited has also asked the Board to open revolving letters of credit in favour of coal companies/Coal India Limited. Despatch of coal is only against the letter of credit.

13. In the above premises, it follows that there is nothing to indicate under the scheme of the Electricity Act or Schedule VI of the Supply Act that interest must be paid on the security deposit.

14. These aspects have been highlighted in Ferro Alloys case (supra).

15. Obviously, the Division Bench of the High Court has not considered the effect of the underlined observations of this Court regarding the permissibility to delete provisions for payment on security deposits, as noted in the said paragraph 158. This has to be decided on the factual position of each case. We find that in the order of the learned Single Judge which formed the subject matter of challenge in the LPAs, there are certain factual conclusions arrived at by learned Single Judge. The Division Bench has not dealt with the acceptability or otherwise of the view and has only referred to paragraph 158 to hold that it cannot be done, overlooking the underlined portion relating to the permissibility for such a course to be adopted.

16. In the aforesaid circumstances, we deem it proper to set aside the impugned judgment in each case and remit the matter to the High Court for a fresh consideration in the light of what has been stated in paragraph 158 so far as it relates to the Boards' powers to delete provision relating to payment of interest on security deposits on the factual scenario. We make it clear that we have not expressed any opinion on the merits of the case.

17. The appeals are disposed of accordingly with no orders as to costs.