

CASE NO.:
Appeal (civil) 4910-4981 of 2005

PETITIONER:
Punjab State Electricity Board Ltd.

RESPONDENT:
Zora Singh & Ors.

DATE OF JUDGMENT: 11/08/2005

BENCH:
Ashok Bhan & S.B. Sinha

JUDGMENT:
J U D G M E N T
[@ S.L.P. (C) No. 22352-22423 of 2003]
W I T H

CIVIL APPEAL NOS. 4983-4984 OF 2005
[@ SLP (C) Nos. 14960 and 16202 of 2004]

S.B. SINHA, J :

Leave granted in S.L.Ps.

Punjab State Electricity Board (for short 'the Board') is a statutory authority created in terms of Section 5 of the Electricity (Supply) Act, 1948 inter alia for the purpose of rationalization of the production and supply of electricity to the consumers. Supply and distribution of electricity indisputably are public utility services. The Respondents herein are agriculturists.

Section 22 of the Indian Electricity Act, 1910 imposes a statutory obligation on the licensee to supply the electrical energy in the following term :

"Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the licence be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply."

Electrical undertakings acquire the character of public utilities by reason of their virtually monopolistic position and their profession to serve the public. The State in exercise of its legislative power had a right to compel the licensees to render service efficiently, promptly and impartially to the members of the public, as has been done by enacting Section 22 of the said Act. Even in common law such public utilities having obtained a licence under a statute are under an automatic obligation by reason of the fact that the property of a public utility is dedicated to public service and impressed with public interest to serve the public and any such statutory obligation is in effect and substance a declaration of the common law.

Upon the dedication of public utility to public use and in return for the grant to it of a public franchise, the public utility is under a legal obligation to render adequate and reasonably efficient service, without unjust

discrimination and at reasonable rates to all the members of the public to whom its use and scope of operation extend and who apply for such service and comply with reasonable rules and regulations of the public utility. Although Section 22 of the Indian Electricity Act, 1910 per se does not apply to Board in view of the provisions of the Electricity (Supply) Act, 1948, the provisions contained therein indicate that the Board has also a duty to render such services.

The right of a prospective consumer is meticulously and minutely regulated under the Electricity (Supply) Act, 1948 and/ or the Indian Electricity Act, 1910 and Indian Electricity Rules. The grounds upon which a licensee can refuse to supply electrical energy is also governed by the statute.

The licensee, thus, has a statutory liability to supply electrical energy to any prospective consumer on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply. Such a statutory obligation on the part of the licensee is also reinforced in terms of Clause VI of the Schedule appended to the Act.

The Respondents herein with a view to obtain supply of electricity energy filed applications and the Board asked them to deposit the security amount. As despite deposit of such security amount and compliance of other formalities electrical energy was not supplied to the Respondents, complaints were filed before various District Forums alleging deficiency in service on the part of the Board.

The Respondents had also spent a huge amount on construction of Kotha and making other arrangements for obtaining supply of electrical energy. The District Forums found the Board guilty of deficiency in service and directed the Board to give the connections to the complainants within the period(s) specified therein and also awarded compensation. The Board preferred appeals thereagainst inter alia on the ground that it was obligated to supply electrical energy to the applicants maintaining the order of seniority, in view of Regulation 24 of the Sales Manual. The said appeals were dismissed. Aggrieved by and dissatisfied therewith Revision Petitions were filed by the Board and by reason of the impugned judgment dated 4.8.2003, the National Commission while upholding the claim of the Board that the order of seniority should be maintained in the matter of supply of electrical energy, directed it to release connections to all applicants by 31.3.2004. It also directed payment of interest at the rate of 12% per annum on the amounts deposited by the complainants and awarded compensation of Rs. 10,000/- each to them. Cost of Rs. 2000/- was also directed to be paid.

Aggrieved the Board is before us.

In these appeals, an additional affidavit has been filed annexing therewith the regulations purported to have been framed under Section 79(j) of the Electricity (Supply) Act, 1948.

Mr. Ashwani Kumar, learned senior counsel appearing on behalf of the Board would contend that the National Commission acted illegally and without jurisdiction in passing the impugned judgments and orders without taking into consideration that the Board at the relevant time did not act only in terms of the circulars issued by the State but also acted under the regulations framed under Section 79(j) of the said Act in terms whereof no interest was payable.

The learned counsel submitted that this Court should take judicial notice of the fact that the Government of Punjab at one point of time directed supply of free electrical energy to the agriculturists resulting in drainage of huge fund and on that account the Board was not in a position to purchase materials required for supply of electrical energy.

The learned counsel would contend that if the order of the Commission is to be given effect to, the Board would have to bear a huge financial liability as during the relevant period 15000 applications for supply of electrical energy were received.

It is not in dispute that prior to framing of the regulations, the Board by way of executive instructions issued circulars known as Sales Manual and Abridged Conditions of Supply. The said executive instructions were restricted for internal circulation only. However, allegedly with a view to provide transparency in the functioning of the Board, Sales Regulations were issued in 1999 incorporating and amending certain provisions contained in Commercial Circular No. 2/97 dated 3.1.1997, including Instruction No. 26. The said Regulations were also placed before the State Legislature on 28.3.2000 as is required in terms of Section 79-A of the Electricity (Supply) Act.

The relevant provisions of Commercial Circular No. 2/97 which allegedly formed a part of Regulation framed under Section 49 and Sub-section (j) of Section 79 of the Electricity (Supply) Act read, thus:

"Subject: Time limit for grant of connections \026 SMI26
The matter regarding time limit for release of connections to various categories of consumers has been reconsidered and it has been decided as under:

After the compliance of demand notice, the connection to various categories of prospective consumers should be given within the time schedule specified below:-

- | | | |
|------|--|-----------|
| i) | Large Industrial Power Supply and Bulk Supply above 100 KW | :3 months |
| ii) | Medium Industrial Power Supply and Bulk Supply upto 100 KW | :2 months |
| iii) | Small Industrial Power Supply category: | |
| | a) Where no augmentation is involved | :2 weeks |
| | b) Where augmentation is involved | :6 weeks |
| iv) | Domestic and Non-residential Supply category | :2 weeks |
| v) | Agricultural Pumping Supply category | :2 months |

Note: The above specified period shall be subject to availability of requisite material like poles, conductors, transformers, insulators and other allied material. It will further be subject to any court case/ dispute or other bottlenecks such as damage of power transformer etc.

However, where connections cannot be released within the above time schedule, reasons for delay shall be displayed on the Notice Board but individual intimation would also be given, in case of small power, medium supply and large supply applicants, indicating the probable date. Where the connection cannot be released within 2 months of compliance of requisite formalities/ compliance of demand notice then the same with the detailed reasons would be brought to the notice of C.E./ Operation concerned.

2. *** **

3. In view of the time limits specified above, it should be ensured that the demand notices are issued carefully taking all the circumstances viz. availability of the funds, materials and also power position into consideration. The release of connections will also be subject to restrictions imposed due to power shortage and loading conditions of the system etc.

The provisions of SMI-26 may be considered as amended

above."

Clause 24 of the Sales Regulations also specifies the period during which electrical connections are to be granted. Clauses 24.6 and 24.8 read as under:

"24.6 Above time frame shall be subject to availability of requisite material particularly poles, conductors, transformers and insulators. It will further be subject to any court case/ dispute or other bottlenecks such as damage to power transformer, etc.

24.8 In view of the time limits specified above, it should be ensured that the demand notices are issued carefully taking all the circumstances viz. availability of funds, materials and also power position into consideration. Release of connections will also be subject to restrictions imposed due to power shortage and loading conditions of the System etc."

On or about 11.7.2001, a Commercial Circular No. 57/2001 was also issued wherein it was stated:

"8.1 Before commencing supply to a prospective consumer or resuming supply / allowing additional load to an existing consumer or any time during the existence of an agreement executed by the consumer with Board, the Board may require the consumer to lodge with it an Advance Consumption Deposit (ACD) and / or Additional Advance Consumption Deposit (AACD), against advance energy charges on which no interest shall be payable. This advance consumption deposit shall not be transferable. Normally, the Advance Consumption deposit will be equivalent to three months electricity bill on the prevalent tariff.

8.4 The ACD/ AACD/ security shall be deposited in cash. No interest is payable on ACD/ AACD deposit against energy consumption. However, interest @ 6% per annum shall be payable on security deposit of Rs. 100/- and above against meters/ metering equipment. However, no interest will be payable, if a connection is disconnected within a year of giving supply."

Before advertng to the rival contentions raised before us, we may notice that keeping in view the fact that the Board had failed and/ or neglected to supply electrical energy to a large number of agriculturists, the National Commission secured the presence of the Chief Engineer (Commercial) of the Board who gave an assurance and undertaking that while maintaining the seniority list electrical connections would be given to all the complainants/ Respondents by 31.3.2004.

Although a contention was raised that the Board is bound to supply electrical energy in terms of the seniority of the applications, no factual dispute was raised that electrical connections were required to be granted within two months of issue of demand notice, the same had not been done for years.

Section 79(j) of the Electricity (Supply) Act, 1948 confers power upon the Board to make regulations laying down principles governing the supply of electricity by the Board. Although it is doubtful as to whether the

Board in exercise of its regulation making power under Section 79(j) can direct that no interest shall be payable at all or limit the rate of interest, it may not be necessary for us to go into the said question in this case as the said regulations are not applicable in the instant case having been brought into force only in 1999 in view of the fact that all the applications had been filed prior to 1999 and demands were raised in 1999.

The administrative circulars as thence existed as also the regulations indisputably require supply of electrical energy to the agriculturists within a period of two months from the date of receipt of the amount asked for in terms of the demand notice. It may be true that the note appended thereto provides that the period specified therein shall be subject to availability of requisite material but the same does not absolve the Appellant from performing its statutory duties.

In Andhra Pradesh State Road Transport Corporation v. The State Transport Appellate Tribunal & Ors., [ILR (2001) AP 1], a Full Bench of the Andhra Pradesh High Court has noticed thus:

"24. The meaning of "note" as per P. Ramanatha Aiyar's Law Lexicon, 1997 Edition is 'a brief statement of particulars of some fact', a passage or explanation\005"

The note, therefore, was merely an explanatory in nature and thereby the rigor of the main provision was not diluted.

The Board in terms of the Regulations was obligated to display the reasons for delay on the Notice Board. They were also required to indicate the probable date of supply therefor. Furthermore, such cases were also required to be brought to the notice of Chief Engineer (Operation). Compliance of the said statutory requirements had not been brought on record. Clause 2 of the said Circular reads as under:

"2. It may, however, be pointed out that the period specified above is the maximum to give connections in much shorter period."

Clause 3 of the said Circular mandates the authorities to ensure that prior to issuance of demand notice, care is taken to take into consideration all circumstances, viz., availability of funds, materials and also power position.

Commercial Circular No. 57/2001 provides for advance consumption deposit or meter security deposit. Clause 8.4 thereof which puts a restriction in the matter of payment of interest relates to only ACD/AACD. 6%, however, is payable on security deposit of Rs. 100/- and above against meters/ metering equipment.

Consumer Protection Act was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' dispute and for matters connected therewith. No dispute has been raised before us that the provisions of the said Act are not applicable.

"Deficiency" has been defined in Section 2(g) to mean "any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods". "Service" is defined in Section 2(o) to mean "service of any description which is made available to potential users and includes provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction,

entertainment, amusement or the pureveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service".

The Board is a statutory authority. It is a 'State' within the meaning of Article 12 of the Constitution of India. As a State, the Board is expected to discharge its statutory functions within a reasonable time having regard to the fact that it undertakes an important public utility service. Its actions besides being governed by the Electricity (Supply) Act and the regulations framed thereunder, it must also fulfill the test of reasonableness as envisioned under Article 14 of the Constitution of India.

What would be a reasonable period for supply of electrical energy to different categories of consumers has been specified in the administrative circulars issued as well as the regulations made by the Board itself. We find from the records that the persons had applied for grant of electrical connection as far back in 1986 and the Board had asked then to deposit the security amount only sometimes in the year 1999. The complaints were filed as despite expiry of the prescribed period, no electrical connection was given. If the Board was serious to implement its own circular, it was obligatory on its part to draw a blue-print so as to enable it to make supply of electrical energy to the consumers in order of seniority of application upon procuring the requisite materials therefor. It failed and/ or neglected to do so. It was also under an obligation to notify the persons concerned stating the reasons why such supply could not be made during the period specified in the administrative circular and/ or regulations. The Board does not say that the said requirements were complied with.

It is also idle to contend that the Board was cash-starved owing to any faulty decision on the part of the State. If it suffered losses owing to any direction issued by the State pursuant to any policy decision adopted by it, the same being an internal matter between the State and the Board, the prospective consumers cannot suffer therefor.

Furthermore, it is evident from the orders passed by the District Forums, State Commission and the National Commission that no reason was assigned by the Board as to why it could not comply with its administrative circulars/ regulations.

Section 24 of the Indian Electricity Act, 1910 mandates a licensee to grant electrical connection to an applicant. Although the said provision is not applicable so far as the Board is concerned, as has been noticed hereinbefore, it is bound to supply electrical energy. The provisions contained therein also envisage supply of electrical energy within a reasonable time. The Board being a deemed licensee under the Indian Electricity Act having been constituted in terms of Section 5 of the Act ordinarily cannot be heard to say that it was not in a position to supply electricity to a class of consumers, having invited applications therefor from them.

In this case, apparently, the Board was not in a position to supply electrical energy to the consumers within a reasonable time from the date of issuance of the demand notice. It not only failed to supply electrical energy to the 71 complainants who were before the National Commission but even failed to supply electrical energy to those who had applied much prior thereto. Before the State Commission and the National Commission, the primal contention of the Board was that the claimants-Respondents could not have been given a march over others who had filed applications prior to them. The National Commission rightly did not find fault with such contention but secured the presence of the Chief Engineer of the Board only for the purpose of ascertaining as to how soon supply of electrical energy could be ensured to all concerned including the claimants \026 Respondents.

Faced with the orders passed by the District Forums and State Commission and having regard to its own stand taken before the National Commission, the Chief Engineer gave an undertaking that all such

connections would be given by 31st March, 2004. From the aforementioned conduct of the authorities of the Board, we have no doubt in our mind had the claimants \026 Respondents not knocked the doors of the forum under the Consumer Protection Act, they might not have even obtained electrical connection for years to come.

In the premises aforementioned, the Commission, in our opinion, has rightly found that the Board having not made itself ready to supply electrical energy to the agriculturists unjustly enriched itself with the money deposited by the complainants without rendering any service in return. It is evident that the Board wanted to fill its coffer with the amount of the security deposits and other deposits made by the prospective buyers of electricity. It has also not been denied that relying on or on the basis of the representations made by the Board in terms of its circular letters and / or regulations, the prospective consumers also spent a huge amount on construction of kotha and making themselves ready for getting the electrical connection.

We are not oblivious of the fact that when public functionary is asked to perform a statutory duty within a specified time, the provisions of the statutes are normally held to be directory in nature. [See P.T. Rajan Vs. T.P.M. Sahir and Others, (2003) 8 SCC 498] But the said principle would not apply in cases when injustice or inconvenience to others would be caused who have no control over those exercising the duty if such requirements are not essential or imperative. [See Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt.) (Dead) and Another [(1995) 5 SCC 159]

In Chandrika Prasad Yadav Vs. State of Bihar and Others [(2004) 6 SCC 331], this Court held:

"31. The question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve."

[See also U.P. State Electricity Board Vs. Shiv Mohan Singh and Another, (2004) 8 SCC 402]

Furthermore, there cannot be any doubt whatsoever that even if an order is found to be not vitiated by reason of malice on fact but still can be held to be invalid if the same has been passed for unauthorized purposes, as it would amount to malice in law.

In Smt. S.R. Venkataraman Vs. Union of India, [AIR 1979 SC 49 : (1979) 2 SCC 491] this Court observed:

"It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is however, quite different. Viscount Haldane described it as follows in Shearer v. Shields:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful

act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

In State of A.P. and Others Vs. Goverdhanlal Pitti [(2003) 4 SCC 739], this Court observed:

"12. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)

13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act\005" [See also Chairman & MD, BPL Ltd. Vs. S.P. Gururaja and Others, (2003) 8 SCC 567 and P. Anjaneyulu vs. Chief Manager, A.P. Circle, Bharat Sanchar Nigam Ltd., Govt. of India, Hyderabad and Another - 2001 (3) ALD 313].

A 'State' within Article 12 of the Constitution of India must act fairly and bona fide. It cannot act for a purpose which is wholly unauthorized and not germane for achieving the object it professes whether under a statute or otherwise.

We do not, therefore, find any fault in the judgments of the National Commission. However, before us a statement has been made that all connections have been given to the claimants \026 Respondents within the period of aforementioned 31.3.2004.

Keeping in view the said fact as also the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice shall be sub-served if the directions issued by the National Commission is modified to the extent that in stead and place of interest at the rate of 12% per annum, the Appellants are directed to pay interest at the rate of 9% per annum and in stead of compensation at the rate of Rs. 10,000/- in each, compensation of Rs. 5000/- in each is directed to be awarded. These appeals are dismissed subject to the aforementioned modifications. No costs.