IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20638 of 2015 (O&M)
Date of decision: August 02, 2016

Garg Inox Limited

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vijay K. Jindal, Senior Advocate with Mr. Amardeep Sheoran, Mr. Rose Gupta, Mr. Himanshu Chauhan for Mr. Sandeep Singh, Mr. Chirag Wadhwa, Mr. Abhinav Sood for Mr. Vikram Singh, Mr. Abhivadya Sood for Mr. Rakesh Gupta, Mr. Prashant Gupta for Mr. Vaibhav Jain, Mr. Hardeep Singh Dhillon for Mr. Brijender Kaushik, Mr. Ravindra Jain and Mr. Ashish Chaudhary, Advocates for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.

Mr. Vinod S. Bhardwaj, Advocate for HERC, Panchkula.

Mr. Raheel Kohli and Mr. Varun Pathak, Advocates for UHBVNL.

...

Rajesh Bindal J.

1. This order will dispose of a bunch of petitions, as detailed below:

Sr. No.	CWP No.	Parties name
1.	20638 of 2015	Garg Inox Limited v. State of Haryana & others
2.	21869 of 2015	Surya Roshni Limited v. State of Haryana & others
3.	22230 of 2015	Garg Aluminio Pvt. Ltd. v. State of Haryana & others
4.	22246 of 2015	Somany Ceramics Ltd. v. State of Haryana & others

5.	23609 of 2015	Rajesh Industries v. State of Haryana & others
6.	23610 of 2015	Tanna Agro Implex Pvt. Ltd. v. State of Haryana & others
7.	23611 of 2015	M/s Bhartiya Cottex v. State of Haryana & others
8.	23612 of 2015	M/s Kamla Rice Mill v. State of Haryana & others
9.	23613 of 2015	M/s Jai Hanumaan Rice and General Mills v. State of Haryana and others
10.	23614 of 2015	Veer Oil and General Mills v. State of Haryana & others
11.	23615 of 2015	Aroma Agrotech v. State of Haryana & others
12.	23616 of 2015	M/s Shiv Shakti Rice Mill v.State of Haryana & others
13.	23617 of 2015	Sunrise Rice Land Pvt. Ltd. v. State of Haryana & others
14.	23618 of 2015	M/s Bansal Rice and General Mills v. State of Haryana & others
15.	23619 of 2015	M/s Bansal Rice and General Mills v. State of Haryana & others
16.	23620 of 2015	Shree Jagdamba Agrico Exports Pvt. Ltd. v. State of Haryana & others
17.	23621 of 2015	M/s Mahavir Agro Foods v. State of Haryana & others
18.	23622 of 2015	M/s Bhartiya Cottex v. State of Haryana & others
19.	23623 of 2015	Aakash Agrotech Pvt. Ltd. v. State of Haryana & others
20.	23624 of 2015	Aroma Agrotech Pvt. Ltd. v. State of Haryana & others
21.	23801 of 2015	Veer Overseas Ltd. v. State of Haryana & others
22.	23851 of 2015	Lord Krishna Rice Mills v. State of Haryana & others
23.	23854 of 2015	M/s Om Rice & General Mills v. State of Haryana & others
24.	24242 of 2015	Aggarwal Food and others v. State of Haryana & others
25.	24243 of 2015	Nav Jyoti Agro Foods Pvt. Ltd. and others v. State of Haryana and others
26.	24244 of 2015	Garg International and others v. State of Haryana & others
27.	24245 of 2015	Ganesh Rice Mills and others v. State of Haryana & others
28.	24466 of 2015	Shri Krishna Overseas and others v. State of Haryana & others
29.	24690 of 2015	M/s Shree Krishan Kripa Feeds v. State of Haryana & others
30.	25084 of 2015	Royal Star Agrotech Pvt. Ltd. v. State of Haryana & others
31.	25220 of 2015	Keshav Export v. State of Haryana and others
32.	25277 of 2015	Bag Poly International Pvt. Ltd. v. State of Haryana & others
33.	25296 of 2015	Ghanshyam Brothers v. State of Haryana and others
34.	26024 of 2015	Gaba Overseas (P) Ltd. v. State of Haryana & others
35.	26061 of 2015	R. D. Industries and others v. State of Haryana & others
36.	26262 of 2015	Mahabir Industries and others v. State of Haryana & others

37.	26265 of 2015	D. D. International v. State of Haryana & others
38.	26632 of 2015	Green Village Agros (P) Ltd. v. State of Haryana & others
39.	27082 of 2015	K. S. Overseas Pvt. Ltd. v. State of Haryana & others
40.	100 of 2016	Gagan Rice Mills and others v. State of Haryana and others
41.	294 of 2016	Bag Poly International Pvt. Ltd. v. State of Haryana & others
42.	711 of 2016	Singla Rice Agro Industries v. State of Haryana & others
43.	1222 of 2016	M/s Venus Cottex v. State of Haryana & others
44.	1238 of 2016	M/s Venus Cottex v. State of Haryana & others
45.	1242 of 2016	Riviera Home Furnishings Pvt. Ltd. v. State of Haryana and others
46.	1574 of 2016	Sachdeva Textiles v. State of Haryana & others
47.	1601 of 2016	M. K. Spuntex Pvt. Ltd v. State of Haryana & others
48.	1602 of 2016	Sachdeva Home Furnishing Pvt. Ltd. v. State of Haryana and others
49.	1603 of 2016	Home Textiles India Ltd. v. State of Haryana & others
50.	1715 of 2016	Jagat Ram Khanna Spinning Mills Pvt. Ltd. v. State of Haryana & others
51.	1718 of 2016	Prem Cotex v. State of Haryana and others
52.	2039 of 2016	Nutri Herbals Pvt. Ltd. v. State of Haryana & others
53.	2761 of 2016	Haryana Chambers of Commerce and Industry v. State of Haryana and others
54.	3144 of 2016	M/s Haryana Woolen Mills (P) Ltd. v. State of Haryana and others
55.	3204 of 2016	Gourav Woollen Mill v. State of Haryana & others
56.	3610 of 2016	M/s Singla Rice Mills v. State of Haryana & others
57.	4316 of 2016	Him Sagar Fibers v. State of Haryana & others
58.	4317 of 2016	Him Sagar Fibers v. State of Haryana & others
59.	4497 of 2016	Modern Dairies Ltd. v. State of Haryana and others
60.	4889 of 2016	Guru Kirpa Agro Foods and others v. State of Haryana and others
61.	4966 of 2016	M/s Harisons Enterprises v. State of Haryana & others
62.	4967 of 2016	B. B. International v. State of Haryana and others
63.	4992 of 2016	M/s G. R. T. Overseas v. State of Haryana and others
64	5020 of 2016	M/s Aggarwal Agro Industries v. State of Haryana & others
65.	5037 of 2016	M/s Rama Rice Mills v. State of Haryana & others
66.	5177 of 2016	M/s United Exports v. State of Haryana & others
67.	5203 of 2016	M/s M. R. Overseas and others v. State of Haryana & others

68.	5259 of 2016	Unique Prints v. State of Haryana and others
69.	5439 of 2016	Kirti Spinning Mills v. State of Haryana and others
70.	5618 of 2016	M/s Galaxy Foods v. State of Haryana & others
71.	5632 of 2016	Rajinder Kumar and others v. State of Haryana & others
72.	6092 of 2016	M. M. University Trust v. State of Haryana & others
73.	6249 of 2016	M/s Global Fat and Feeds & others v. State of Haryana & others
74.	11157 of 2016	M/s Krishna Metal and another v. State of Haryana & others
75.	12295 of 2016	Suresh Kumar Versus State of Haryana and others
76.	12611 of 2016	Bala Sundri Foods and others Versus State of Haryana and others
77.	12797 of 2016	Mahavir Chemical Versus State of Haryana and others
78.	13017 of 2016	Urmila Overseas and another Versus State of Haryana and others
79.	14032 of 2016	M/s Gupta Metal Industries Versus State of Haryana and others
80.	14044 of 2016	M/s Himalayan Rolling Mills Versus State of Haryana and others
81.	14100 of 2016	Smt. Indu Jindal Versus State of Haryana and others
82.	14286 of 2016	M/s Tripati Balaji Wooden Industries Versus State of Haryana and others

2. However, the facts have been extracted from CWP No. 20638 of 2015.

3. Challenge has been made to the vires of clause 5 of the Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 (for short, 'the Regulations') as framed by Haryana Electricity Regulatory Commission (for short, 'the Commission') and letter dated 18.6.2015 (Annexure P-4) issued by respondent No. 5, vide which demand has been raised. It has further been prayed that the petitioner be permitted to furnish bank guarantee or irrevocable letter of credit in lieu of deposit of advance consumption deposit/ security in cash.

4. It is pleaded that the petitioner is public limited company engaged in the business of manufacture of stainless steel wires and bars. It is the large supply consumer of electricity. The grievance was on account of demand of ₹ 1,69,88,808/- on account of advance consumption deposit.

5. Learned counsel for the petitioner, while referring to clause 5.3.4 of the Regulations, submitted that the requirement is to deposit the security amount either in cash or by way of cheque or bank draft. Fairly he did not dispute either the amount of security deposit determined or the right of Uttar Haryana Bijli Vitran Nigam Limited (hereinafter described as 'the licensee') to demand advance consumption deposit. While referring to the provisions of Section 61 of the Electricity Act, 2003 (for short, 'the Act'), learned counsel for the petitioner submitted that clauses (c) and (d) thereof required certain factors to be considered for the purpose of determination of tariff, which included competition, efficiency, economical use of the resources, optimum investments and especially safeguarding the consumers' interest. At the same time, recovery of cost of electricity in a reasonable manner was also provided.

6. He further submitted that Section 82 of the Act envisages constitution of State Commission in every State, whereas Section 181 of the Act provides for powers of the State Commission to make regulations. Sub-section (2)(zd) thereof was referred to, which provides for framing of Regulations providing for terms and conditions for determination of tariff under Section 61 of the Act. Impugning the Regulations only to the extent that it provides for deposit of advance consumption deposit in cash, learned counsel for the petitioner submitted that there is no explanation given in the Regulations or justification in the stand taken by the respondents in reply to

the petition as to why only cash is being insisted upon, whereas to secure the interest of the licensee, the petitioner is ready and willing to furnish bank guarantee or irrevocable letter of credit. The licensee is to secure the bills raised to a consumer. In case, the bill is not paid, the amount can very well be recovered from the bank guarantee or the letter of credit. Disconnection of electricity is permissible. The cash is being asked for from the consumer only to benefit the licensee, as it will generate huge capital with no corresponding benefit to the consumer. Section 61 of the Act provides that even the interest of the consumer is also to be kept in mind, but if seen in that light, the provisions in the Regulations are totally unreasonable. The Commission had failed to exercise the jurisdiction vested in it by not balancing the interest of the licensee as well as the consumer. If the licensee is running into losses and the effort by recovering the advance consumption deposit in cash is to set off that, it can very well be part of the tariff. The purpose is only unjust enrichment of the licensee. Even the objects of the Act also provide that interest of the consumer is to be watched.

7. He further referred to circular No. PR-3/COS/35037 dated 1.9.2007 issued by Maharashtra State Electricity Distribution Co. Ltd., where the consumers have been permitted to furnish bank guaratnee or irrevocable letter of credit. Once the licensees in other States are being permitted to furnish bank guarantee or irrevocable letter of credit in lieu of cash as advance consumption deposit, the consumers in the State of Haryana should not be discriminated. While referring to the judgment of Hon'ble the Supreme Court in Ferro Alloys Corpn. Ltd. v. A. P. State Electricity Board, AIR 1993 SC 2005, it was submitted that if the action of the

authorities is unreasonable and unconscionable, the court can always interfere. In the case in hand, the Regulations are totally unreasonable and unconscionable. The fact that the bills are to be raised after one month or two months for different categories of consumers is always taken care of at the time of fixation of tariff by the Commission. He further submitted that the judgment may be relied upon by learned counsel for the respondents, however, the fact remains that the issue as to whether advance consumption deposit can be directed to be deposited in cash or bank guarantee/irrevocable letter of credit can be accepted, was not considered in that judgment. Further, reference was also made to judgments of this court in M/s Anil Spinners v. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2009(4) PLR 678 and Mandi Gobindgarh Induction Furnace Association v. Punjab State Electricity Regulatory Commissioner and another, 2012(4) PLR 477.

8. On the other hand, learned counsel for Uttar Haryana Bijli Vitran Nigam Ltd. submitted that Section 47 of the Act empowers the licensee to ask for security from any person who requires supply of electricity. It further provides that the licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission on the security and refund such security on the request of the person depositing the same. In case, the consumer fails to furnish security as required, his power supply can be disconnected. Any consumer is permitted to take power supply through pre-paid meter as well. The aforesaid section clearly shows that the security has to be in cash only, as otherwise there is no question of payment of interest. Merely on bank guarantee or irrevocable letter of credit, there cannot be any direction to pay interest. The

Regulations have been framed in exercise of powers conferred on the Commission under Section 181(2) (v) and (w) of the Act. The Regulations framed requiring the consumer to deposit the security in cash cannot be said to be beyond the powers conferred on the Commission to frame Regulations or the right of the licensee to have security. Vires of any regulation can be challenged only if it is beyond the statute under which it is framed. The judgment in Ferro Alloys Corpn. Ltd.'s case (supra) was referred to show as to what is the nature of advance consumption deposit and why it is required to be deposited. The right of the licensee to demand security was upheld by Hon'ble the Supreme Court. The judgment of Hon'ble the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others, (1985) 1 SCC 260 was referred to submit that the State does not run on bank guarantee. The judgment of this court in M/s Anil Spinners' case (supra) was referred to submit that same Regulations were challenged with reference to the amount of security and the petitions were dismissed. However, he did not dispute the fact that challenge in those petitions was merely to the amount of security demanded and not the issue as to whether it should be in cash or in the form of bank guarantee or irrevocable letter of credit.

9. He further submitted that the Regulations framed by the Commission in Haryana cannot be said to be *ultra vires* merely because in the State of Maharashtra, the licensee permitted furnishing of bank guarantee in lieu of cash. He further submitted that the consumer as such is not to suffer any loss in case the amount is deposited in cash, as the amount of advance consumption deposit received by the licensee has been taken care of as part of the working capital for the purpose of determination of

tariff in terms of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution and Retail Supply under Multi Year Tariff Framework) Regulations, 2012. He further submitted that in case the security is not taken in cash, that would mean that the licensee will have to raise more loans for working capital from the financial institutions and pay interest thereon. The cost will be added to the tariff.

10. Learned counsel appearing for the Commission submitted that power of the Commission to frame Regulations with reference to the right of the licensee to claim security is not in dispute. To balance the interest of the licensee as well as the consumer and keeping in view the provisions of Section 47 of the Act, Clause 5.7 of the Regulations provides for payment of interest on advance consumption deposit. The rate of interest determined by the Commission for the year 2015-16 was 8.5% per annum. Meaning thereby the interest of the consumer has been taken care of. He further submitted that once the competence of the authority framing the Regulations is not in dispute, these are not contrary to the provisions of the Act, under which these are framed or against the public policy, the same cannot be said to be *ultra vires.* In the power of judicial review, this court would not like to substitute the bank guarantee for cash, as used in the Act and the Regulations framed thereunder.

11. In response to the contentions raised by learned counsel for the respondents, learned counsel for the petitioner submitted that in none of the judgments cited by the respondents, the issue as to whether advance consumption deposit has to be in cash only and not in the form of bank guarantee or irrevocable letter of credit has been gone into.

12. Heard learned counsel for the parties and perused the paper book.

13. Before we proceed to consider the contentions raised by learned counsel for the parties, it would be appropriate to refer to the relevant provisions and the scheme of the Act. The same are extracted below:

> Sections 47, 61(c) and (d), 181 (2)(v)(w) and (zd) of the Act
>
> **47. Power to require security.-** (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him--
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> (a) in respect of the electricity supplied to such person; or
>
> (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,
>
> and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.
>
> (2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security

for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

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61. Tariff regulations.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

xx xx xx

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner,

xx xx xx

181. Powers of State Commissions to make regulations.-

xx xx xx

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

xx xx xx

(v) reasonable security payable to the distribution licensee under sub-section (1) of Section 47;

(w) payment of interest on security under sub-section (4) of Section 47;

xx xx xx

(zd) the terms and conditions for determination of tariff under section 61;

xx xx xx

Clause 5 of the Regulations

5. Power to require security

5.1The licensee may require any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to give him security, for the payment of all monies, which may become due to him in respect of

5.1.1 the electricity supplied/ to be supplied to such person (Consumption Security):

5.1.2 any electric line/ plant/ meter to be provided by the licensee for supplying electricity to such person;

5.2 If the person fails to give such security, referred to in regulation 5.1, the licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the electric line/ plant/ meter for the period during which the failure continues.

5.3 Consumption Security

5.3.1 The LT consumers shall at all times maintain with the licensee an amount equivalent to consumption charges of four months wherever bi-monthly billing is in vogue and two months in the case of monthly billing cycle, as consumption security towards the electricity supplied/ to be supplied to him against any default in payment during the period the Agreement for supply of energy is in force:

Provided that as and when the bi-monthly cycle is replaced with monthly billing cycle, the licensee shall refund the excess amount if any, over the two months charges by adjustment against the existing dues or those becoming due immediately thereafter.

5.3.2 The HT consumers shall at all times maintain with the licensee an amount equivalent to consumption charges of two months as consumption security towards the electricity supplied/ to be supplied, against any default in payment during the period the Agreement for supply of electricity is in force.

5.3.3 If any person requiring supply under LT or HT is prepared to take the supply through a pre-payment meter, the licensee shall not be entitled to collect consumption security from such person.

Provided that in the case of existing consumers (LT or HT) who opt for the supply through pre-payment meter, the balance amount of consumption security of such consumers after adjusting against pre-payment amounts payable by them, if any, shall be refunded.

5.3.4 The consumption security amount shall be paid either in cash or local cheque(s) (outstation cheque(s) will not be accepted) or through demand draft (DD) drawn in favour of the licensee.

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Clause 5.7 of the Regulations

5.7 Interest on Consumption Security and Meter Security

The licensee shall pay interest on Consumption Security and meter security deposited by the consumer at the Saving Bank rate notified by State Bank of India or such higher rate as the Commission may fix, from time to time. The interest accruing to the credit of the consumer shall be adjusted in energy bills of April or May of every year or in the final bill if permanent disconnection is sought by the consumer during the year."

14. Section 47 of the Act, as referred to above, empowers the licensee to ask any person who requires supply of electricity to give him reasonable security, as may be determined by the Regulations. The security is on account of the payment, which may become due from the consumer on

account of supply of electricity or where any electric line or electrical plant or electrical meter is to be provided for supplying electricity to such person. In case of failure of that person to give security, the licensee may refuse to supply electricity or provide any other facility. In case the security so given by any person becomes invalid or insufficient, the licensee may, by notice, require that person to give reasonable security for the payment of the money due from him. On failure to give security, the licensee can discontinue the supply of electricity for the period the default continues. Sub-section (4) thereof mandates the licensee to pay interest on such security at the rate equivalent to the bank rate or more, as may be specified by the State Commission in this regard. Refund of security is permissible on request of the person concerned. The licensee cannot ask security from a person in case that person is prepared to take supply through a pre-paid meter.

15. Sections 181(2) (v), (w) of the Act empowers the Commission to frame Regulations with reference to the provisions of Section 47 of the Act. In exercise thereof, the impugned Regulations were framed way back in the year 2005, which are sought to be challenged now after more than a decade, though there may have been deposit of security on release of new connections or additional demand of security on account of increased load or power tariff and the amount may have been paid at that time.

16. Before the enactment of the Act, the electricity supply was being regulated by the Electricity (Supply) Act, 1948. Section 49 thereof enabled the Electricity Board to frame Regulations. The Regulations were framed at that time for demand of security deposit. The same were under consideration before Hon'ble the Supreme Court in Ferro Alloys Corpn. Ltd.'s case (supra). Hon'ble the Supreme Court opined on the nature of

consumption security deposit and the object for demand thereof. It was opined that security deposit is in fact adjustable advance payment of consumption charges. It is revisable from time to time on the basis of average consumption charges. The normal period of consumption, time for raising the bills, time granted for payment, notice for disconnection etc. were taken care of and it was opined that consumption cycle for a period of three months is reasonable for demanding the security. The consumer is supplied energy on credit as the billing is periodic. For generation, purchase and supply of energy, the Board needs funds, which are in the form of capital or loans taken from various financial institutions. Working capital is required for purchasing inputs. If the power generation is through thermal plant or if it is to be purchased from central projects, in most of the cases, advance payment is made. These transactions do not materialise only by furnishing bank guarantee or letter of credit. The relevant paras thereof are extracted below:

> "100. The next question will be: what is the object in demanding security?
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> 101. 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.
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> 102. As a matter of fact, electricity is supplied in anticipation of payment. In almost every case it takes nearly 2-1/2 months

for the recovery of the amount before action for disconnection could be taken. We will give one illustration as is in the case of Rajasthan. The following is the billing cycle:

(a)	Consumption period.	30 days
(b)	Period consumed after taking the meter readings to issue bills.	10 days
(c)	Period allowed for payment.	17 days
(d)	Notice for disconnecting supply if consumer fails to deposit energy bill in time.	7 days
(e)	Period taken in actual disconnection after expiry of notice.	10 days
	Total:	74 days

103. In practice, some time is also taken between the period allowed for payment and the notice of disconnection. At the same time, there is no obligation that the consumer must use only a particular quantum of electricity. He could even consume more than the average consumption. The Board after 2-1/2 months recovers amount for the electricity supplied by it. It could charge late surcharge in case of high tension tariff after the expiry of the said period.

104. Thus, it will be clear that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit

before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like a running current account.

105. The cycle of billing by the Board demonstrates that in the very nature of things, the consumer is supplied energy on credit. The compulsory deposit in the context of billing cycle is hardly adequate to secure payments to the Board by the time the formal bill by the Board is raised on the consumer. In one sense, the consumption security deposit represents only a part of the money which is payable to the Board on the bill being raised against the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability.

106. 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 of 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 payment are made by the Board. On such advances the Board is not paid any 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.

107. From the above, it is clear that while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from 2 to 3 months depending upon the category of consumers. To off-set part of the amount the consumer owes to the Board continually to ensure timely payment of bills by the Board to its suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the consumer. The clauses in the

contract in relation to conditions of supply of electric energy enable the Board to adjust the bill against such deposits. Therefore, this is not a case of mere deposit of money as in commercial transaction......

[Emphasis supplied]

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109. In these circumstances, we conclude that the object of security deposit is to ensure proper payment of bills

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17. Following para from the judgment of K. C. Works v. Secretary, A.P.S.E.B., Vidyut Soudha, AIR 1979 AP 291 was referred to:

> "As a matter of fact it may be that the writ appellant and the writ petitioner before us are prompt in paying their electrical dues, but the Board deals with lakhs and lakhs of consumers and it should have a uniform policy in demanding security. It cannot make a distinction or discrimination from one consumer to another. That is why a uniform policy has been laid down by incorporating it in the conditions aforesaid. For these reasons we are satisfied that the requirement of security for three months' average consumption charges by way of cash deposit is reasonable."

18. The aforesaid paragraph suggests that any licensee is required to take an over-all view of different types of consumers and frame a uniform policy for demand of security. There cannot be different para-

meters for different consumers. Security for average consumption of three months for cash deposit was found to be reasonable.

19. In Mandi Gobindgarh Induction Furnace Association's case (supra), a Division Bench of this court upheld similar Regulations framed by Punjab State Electricity Regulatory Commission with reference to demand of security. In M/s Anil Spinners' case (supra) as well, the Regulations in question were upheld, though the issue regarding the security being in cash or in the form of bank guarantee was not raised, which is sought to be raised in the present petitions, terming the same to be unreasonable and unfair to the consumer. The issue raised therein was regarding the amount of security demanded, which was upheld.

20. The validity of any Regulation is to be examined in the light of the provisions of the statute, under which those Regulations have been framed. The scope of power in the case in hand is Section 47 of the Act. From a bare perusal thereof under the scheme of the Act, it is plain and evident that security has to be in cash as the licensee has been mandated to pay interest equivalent to the bank rate or more, as may be specified by the State Commission, on such security deposit. No security is to be demanded from a consumer, who is prepared to take supply through a pre-paid meter.

21. As far as safeguarding the interest of the consumers is concerned, in our opinion, that has been appropriately taken care of by the provisions of the Act and the Regulations framed thereunder. Firstly, the same is by way of payment of interest on such deposit at the rate to be determined by the Commission, which in the year 2015-16 was stated to be @ 8.5% per annum, which is quite reasonable and apparently maximum rate of interest for deposit in a bank.

22. Further, as has been discussed in the judgment of Hon'ble the Supreme Court in Ferro Alloys Corpn. Ltd.'s case (supra) that the licensee requires money for the purpose of generation, purchase and supply of electricity to the consumers in advance and the bills are raised later on. It is a kind of working capital. After major reforms were carried out in electric supply system, the Commission was constituted with an object to over-see fixation of tariff for supply of electricity. The exercise is done after affording due opportunity to the consumers as well. For the purpose, the Commission framed Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution and Retail Supply under Multi Year Tariff Framework) Regulations, 2012. Clause 22.1 thereof provides for components of working capital and one of the components of working capital for retail supply of electricity is the consumer security/ advance consumption deposit. Meaning thereby, the amount of advance consumption deposit deposited by the consumer with the licensee, on which provision for payment of interest has been made, is taken care of by the Commission for considering the requirement of working capital of a licensee. The tariff is finally determined keeping in view the cost to be incurred for generation, purchase and supply of electricity.

23. Any relaxation given by the State of Maharashtra cannot be a ground to strike down the Regulations in the State of Haryana, which have been framed in exercise of powers conferred under the Act. The argument is merely to be noticed and rejected.

24. Section 61 of the Act has relevance for determination of tariff and for advance consumption deposit separate Section 47 of the Act is there.

25. It cannot be opined by any stretch of imagination that the Regulations are beyond the provisions of Section 47 of the Act, which itself suggest that security has to be in cash. The Regulations are in line thereof, hence, cannot be said to be beyond the provisions of the Act.

26. For the reasons mentioned above, we do not find any merit in the present petitions. Accordingly, the same are dismissed. However, in case any of the petitioners represents the competent authority seeking to deposit the additional security amount in instalments, the same may be considered sympathetically by framing a uniform policy.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 02, 2016
mk

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No