THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.16934 of 2007

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, by the petitioner to declare the letter, dated 19.04.2007, of the 3rd respondent, Senior Accounts Officer, The Central Power Distribution Company of A.P. Ltd., Operation Circle, Nalgonda District, as illegal, arbitrary, unjust and void and to consequently set the same aside.

2. I have heard the submissions of Sri D.V. Nagarjuna Babu, learned counsel for the writ petitioner and of the learned Standing Counsel for TS Transco. I have perused the material record.

3. The chronology of events, in brief, is as follows:

Assailing the enhanced tariffs in respect of HT consumers related to the years 1987 and 1989, various HT consumers including the present petitioner filed writ petitions. The batch of writ petitions were allowed by a learned single Judge of this Court and the enhanced tariffs in entirety for the year 1987 were quashed; insofar as the enhancements for the year 1989, the writ petitions were partly allowed. The then Board (A.P.S.E.B) filed writ appeals. By a judgement dated, 02.04.1990, all the writ appeals were allowed by a Division Bench. The Division Bench granted (6) instalments to the writ petitioner for payment of the arrears of tariff, which was stayed during the pendency of the writ petitions and writ appeals. According to the writ petitioner, the said facility was extended by the Division Bench by taking into account substantial power cuts imposed on the HT consumers by the Board. The writ petitioner was required to pay Rs.1,34,96,686.76 ps in (6) equal instalments commencing from 01.06.1990 to December, 1990. The

petitioner paid the said amount as per schedule is not in dispute. However, apart from the above said amount, the Board required the petitioner to pay Rs.53,48,198.59 ps towards belated payment charges as per condition no.32 of the Terms and Conditions of Supply upto 31.05.1990 in (6) instalments commencing from 20.07.1990 to 20.12.1990. The petitioner paid the said amount as per schedule fixed by the Board is also not in dispute. However, before making payment the writ petitioner challenged the above payment demanded by filing writ petition in WP.No.10476 of 1990; but no interim order was granted. A learned single Judge allowed the said writ petition along with batch of writ petitions filed by HT consumers by holding that the belated payment charges cannot be levied between the date on which the learned single Judge allowed the writ petitions filed by the consumers, that is, 06.09.1989, to the date on which the Division Bench allowed the writ appeals on 02.04.1990. Aggrieved of the same, the Board preferred appeals and the said appeals were allowed by this Court. Thereafter, the 3rd respondent issued the subject bill for the month of December, 1993, for a total sum of Rs.1,01,98,210/- and in the said bill, an amount of Rs.21,31,936.25 ps was claimed towards 'penal interest'. Out of the said total amount of Rs.21,31,936.25 ps, Rs.13,90,659.30 ps was levied towards surcharge under condition no.32 at the rate of 24% per annum for the period from 08.08.1990 to 04.01.1991 during which period the petitioner paid instalments of tariff arrears pursuant to the order of the Division Bench. Further, a sum of Rs.5,30,253.20 ps was levied under condition no.34 at the rate of 18% per annum. Further, a sum of Rs.2,01,025.75 ps was demanded for the period from 20.07.1990 to 20.12.1990 at the rate of 24% per annum under condition no.32 of the Terms and Conditions of Supply on a sum of Rs.53,98,198.50 ps which

was claimed towards belated payment charges. Challenging this levy, the writ petitioner filed W.P.No.1227 of 1994. This court granted stay initially and ultimately by an order dated 28.08.2006 dismissed the said petition following the judgment in Navabharath Ferro Alloys Limited v. A.P.S.E.B [AIR 2002 AP 493]. Consequently, the petitioner paid the said sum of Rs.21,31,936/- which was the subject matter of W.P.No.1227 of 1994. Thereafter, the 3rd respondent *vide* letter, dated 19.04.2007, which is impugned in this writ petition, required the petitioner to pay a sum of Rs.1,69,150/- towards interest on penal charges at the rate of 24% per annum on Rs.21,31,936.25 ps, which was the subject matter of WP.No.1227 of 1994. It is pertinent to note that the said amount of RS.21,31,936.25, which has been paid in instalments by the petitioner, is in the nature of additional charges at the rate of 24% per annum under condition no.32 and condition no.34 of the Terms and Conditions of Supply respectively of the erstwhile APSEB, which are applicable to the facts of the case. The said demand pertains to interest charges. Hence, the writ petition is filed questioning levying of further interest on penal interest as capitalisation of penal interest charges is impermissible in law.

4. The defence of the respondents as stated in the counter of the 2nd respondent is this:

The writ petitioner paid (6) instalments as follows: 'Rs.3,55,322/- on 09.10.2006, 10.11.2006, 11.12.2006, 10.01.2007 and 12.02.2007 respectively'. However, as the writ petitioner paid the said penal interest charges in instalments, penal interest at 24% per annum for the delay in number of days from the date of judgment were calculated and

levied in 03/07 C.C. Bill for Rs.1,69,152.74 ps as penal interest amount was paid in (6) instalments.

5. Thus, the present claim is interest on penal interest for the belated payment of the penal interest is not in dispute. Therefore, the short question is whether the respondents are entitled to demand and collect the said amount of Rs.1,69,153/- (1,69,152.94 ps), which is admittedly, interest on penal interest which payment is outstanding and not paid though demanded vide bill for 03/07 dated 25.03.2007.

6. Learned counsel for the petitioner contends that the Division Bench of this Court granted instalments having regard to the facts and circumstances of the case and that the amount payable under the equated instalments is duly paid and that the said amount that was paid is admittedly in the nature of additional charges at the rate of 24% per annum and that therefore the amount that was permitted to be paid in equated instalments and duly paid is interest charges and therefore the question of levying further interest or penal interest on the interest by capitalising the interest on penal interest is impermissible under law.

6.1 Learned counsel for the petitioner drew the attention of this Court to the relevant regulations, 32.2.1(a) and 34(a), which read as under:

> '32.2.1(a) Bills shall be paid by the High Tension Consumers within 15 days and Low Tension consumers within 14 days from the date of the bill, failing which the consumer shall be liable to pay additional charges at the rates as prescribed by the Board from time to time and notified in the Tariff Notifications of the Board. In the case of consumers covered by Card System of billing the payment shall be made in the manner specified in the tariff applicable to such consumers.

> 34.(a) *Payment of dues of the Board in instalments*: The Board may permit a consumer when he so requests, to pay charges for electricity supplied, consumption deposit or any other charges in instalments provided that, where such request is granted the consumer shall in addition to any additional charges leviable due to belated payment as per the clause 32.2 here of under the other terns and conditions of supply, pay interest charges at 24% per annum, on the amount outstanding out of the charges allowed to be paid in instalments.

7. Learned Standing Counsel while reiterating the case of the respondents, which is already stated supra, would contend that 34(a) on a plain reading clearly shows that the Board is entitled to permit a consumer to pay charges for electricity supply, consumption deposit or any other charges in instalments and that when such request is granted to the consumer the consumer shall in addition to the charges is obligated to pay interest charges at 24% per annum and that the Board is entitled to levy the said charges due to belated payment as per clause 32.2 and that the present demand in the present case comes under the class 'any other charges' and therefore the Board is justified in making the demand.

8. Per contra, learned counsel for the petitioner would submit that a plain reading of both the above regulations would indicate that on charges interest is collectable but not on interest and in any view of the matter the respondents are admitting that the claim is towards interest on penal charges and, therefore, interest on penal charges or penal interest cannot be demanded and collected. He placed reliance on the decision of the Supreme Court in Central Bank of India v. Ravindra and others[1] wherein the Supreme Court while interpreting Section 34 of CPC made the following among other observations: 'Though interest can be

[1] (2002) 1 SCC 367

capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.' He would also point that that the 3rd respondent in his letter dated 19.04.2007 addressed in reply to the letter dated 12.04.2007 of the writ petitioner had confirmed that the payment of interest on penal charges is included in CC Bill 03/07 and that therefore the claim is interest on interest is not in dispute.

9. On the analysis of the above submissions it emerges that the present claim is for belated payment of penal interest charges in instalments after the date of judgment and that the said penal interest at 24% per annum for the delay was calculated and levied in 03/07 CC bill. Thus, the present claim is interest on penal interest or penal charges is undisputed. The provisions which are referred to supra permit the Board to collect interest on charges of electricity supplied, consumption deposit or any other charges when permitted to be paid in instalments due to belated payment but the said provisions do not permit to levy interest on penal interest, in the considered view of this Court.

10. In view of the facts and the ratio in the decision of the Supreme Court, this Court is of the considered opinion that the writ petition shall succeed.

11. In the result, the Writ Petition is allowed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

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M. SEETHARAMA MURTI, J

14-02-2017
Vjl