123

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP-18569-2022 (O&M).
Decided on: August 23, 2022.

M/s Shivam Milk Chilling Centre and others

.. Petitioners

VERSUS

Punjab State Power Corporation Limited and another
.. Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT Mr. Lupil Gupta, Advocate, for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari for seeking quashing of the impugned orders dated 29.06.2022 (Annexures P-1 to P-20) issued by the respondent No.2 claiming the revised Advance Consumption Deposit (for short 'ACD') as per consumption against the electricity connection of the respective petitioners.

2 Learned counsel appearing on behalf of the petitioner contends that the petitioners are consumers of the respondent distribution licensee and that they have been regularly paying the energy bills against the respective connections. He contends that the Govt. of Punjab had announced that they will give 300 Units per month of electricity free of cost

to certain consumers, thus, causing financial loss to the Government and that the enhancement in the ACD is seemingly undertaken to fulfil the loss which the Government is likely to suffer. He contends that as per the Regulation 31.8 of the Supply Code- 2014, the Punjab State Electricity Regulatory Commission, Punjab (for short 'the PSERC') has announced that consumers making the advance payment of their electricity bills would be entitled to receive interest on deposit amount at the rate of 7% per annum for the financial year 2021-22. He further places reliance upon regulation 31.8 of the Electricity Supply Code-24 which reads thus:-

> *"31.8 The consumer may deposit advance payment of future bills which shall be adjusted in the succeeding months. The distribution licensee shall, however, continue to issue monthly/bimonthly bills which would indicate the amount adjusted and the balance amount of advance payment. The distribution licensee shall give interest @1.00 % per month on the advance payment. The credit for the interest shall be given when the advance paid becomes zero or on 31st March whichever is earlier for such advance payment."*

3 A further argument is raised that demand of the revised ACD has been made without granting any opportunity of hearing to the petitioners and that a representation in this regard has also been submitted. He contends that revision of ACD without granting an opportunity of hearing to the petitioners is bad and is liable to be set aside. He did not refer to any judgment to support his above arguments.

4 I have heard the learned counsel appearing on behalf of

the petitioners and have gone through the averments contained in the present petition and the documents appended along with.

5 Section 47 of the Electricity Act, 2003, deals with the issue of advance consumption deposit (ACD) and the same is extracted as under:-

> *"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*
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> *(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.*
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> *(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."*

6 The security under Section 47 of the Electricity Act, 2003, is determined in terms of the regulations framed by the appropriate Commission. The determination of ACD has to be done after taking into consideration the regulations so framed by the appropriate Commission, the electricity supplied to the consumer, the tariff plan applicable to the consumer and also other statutory charges as may be approved by the appropriate Commission. Counsel for the petitioner has nowhere alleged that the "ACD" as demanded by the respondent No.1 - PSPCL is not in accordance with the regulations framed by the appropriate Commission.

7. It thus has to be presumed that the determination of the ACD is in consonance with the Regulations approved by the PSERC.

8. Furthermore, all such regulations are notified by the appropriate Commission after calling objections from general public and granting opportunity of hearing. Any determination carried out by the

distribution licensee as per the regulations does not require any opportunity of hearing to be granted. The demand of ACD is not a prejudicial order or a demand contrary to law or an accrued right. As a matter of fact, a consumer is mandated to deposit the ACD as computed under the governing regulations for continuation of the electricity supply. Besides, the consumer is entitled to interest on such ACD in terms of Section 47 (4) of the Electricity Act, 2003.

9. In so far as a reference to Clause 38.1 of the Supply Code, 2014 is concerned, the same is not in context of the ACD. The said clause pertains to advance payment of energy charges and it is not the same as ACD. ACD is a security deposit and is not adjusted towards the running energy charges of energy bills against the consumption of energy. A reference to the said provision is thus misconceived and the petitioner cannot derive any benefit from the same. A Division Bench of this Court while referring to the issue of ACD in reference to a matter pertaining to the State of Haryana in **"Garg Inox Limited Vs. State of Haryana and others, bearing CWP No.20638 of 2015, decided on 02.08.2016** has examined the aspect of demand of security in terms of Section 47 of the Electricity Act, 2003. The Division Bench considered the object in demanding security. The relevant extract thereof is reproduced hereinbelow:-

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"100. The next question will be: what is the object in demanding security?

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.

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. Dispatch 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."

10. The regulations framed by the Haryana Electricity Regulatory Commission, directing the security to be deposited in cash, were upheld by this Court. The relevant part is extracted as under:-

"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."

11. Another Division Bench of this Court in the matter of **Mandi Gobindgarh Induction Furnace Association Vs. Punjab State Electricity Regulatory Commission and anr. bearing CWP No.21818 of 2010, decided on 16.05.2012**, has observed as under:-

"10. The Appropriate Commission i.e. Respondent No.1 in the present case, is competent to frame Regulations under Section 181 of the Act including to determine the reasonable security payable to the licensee and the payment of interest on such amount. On the other hand, under Section 61 of the Act, the Commission is competent to specify the terms and conditions for the determination of the tariff including that the supply of electricity is conducted on commercial principles. The Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matter) Regulations, 2007 have been framed by the Commission inter-alia in exercise of the powers conferred under Section 181 read with Section 61 of the Act. Therefore, it cannot be said that the Commission is not competent to frame Regulations without any request from a licensee as stipulated under Section 47 of the Act.

11. Section 47 of the Act contemplates that a distribution licensee may require any person, who requires a supply, to give him reasonable security, as *may be determined by regulations. The argument of learned counsel for the petitioner is that in the absence of any request from the distribution licensee, the Commission cannot frame Regulations, is not tenable. Firstly, the Regulations contemplating that a distribution licensee "may require any person" is enabling provision so as to confer jurisdiction on a distribution licensee to move the Commission for deposit of reasonable security as condition of supply. But it does not oust the jurisdiction of the Commission, de-hors the request from a licensee, to frame regulations relating to security. It is the duty of the Commission to ensure recovery of the cost of electricity in the reasonable manner in terms of Section 61. Secondly, the Commission is to determine tariff for transmission and wheeling of electricity. The condition of security deposit is a condition for supply of electricity and, thus, the Commission can determine the amount of security in exercise of powers conferred under Section 86 (1) (a) of the Act as well.*

12. The condition of security earlier called as 'Advance Consumption Deposit' was part of the conditions of supply as contemplated by the Electricity Act, 1910. Considering the said provisions, a Single Bench of Delhi High Court in <u>M/s Haryana Ice Factory Vs. Municipal Corporation of Delhi & another AIR 1986 Delhi 78</u> has held that demand of security by the licensee is correlated to the consumption pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non-payment of the charges *due. At that time, no independent Regulatory Commission was in existence and the licensee was authorised to determine the amount of security. Examining the provisions of Section 21 (2) of the Act, the Court held to the following effect:*

> *24. The demand of the security by the Corporation is correlated to the consumption pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non-payment of the charges due. This Court cannot enter into mathematical calculations to come to a conclusion that instead of three months, it should be 2½ months. The fixing of the period of security equal to energy consumption of three months is reasonable. The rationale or basis on which the additional security had been demanded was gone into by high-powered Committee appointed by the Corporation and they found a reasonable basis for the demand of the security deposit. It may be that the Haryana Electricity Board has fixed the period of security deposit equal to the amount of energy consumed for a period of two months but that would depend upon the billing cycle adopted by the Haryana State Electricity Board. The Supreme Court accepted the view of the Andhra Pradesh High Court followed by the Rajasthan High Court who held that it is reasonable on the part of the Board to require security for three months consumption charges. I, therefore, do not find the demand of the Corporation either arbitrary or unreasonable.*

13. Therefore, the security amount by whatever name called was the condition of supply even prior to enactment of the Act and continues to be part of conditions of Supply after the Act came into force.

14. The Hon'ble Supreme Court in Ferro Alloys Corporation Ltd. Vs. A.P. State Electricity Board AIR 1993 SC 2005 has held to the following effect:

> *"34. The reason why three months' security deposit is demanded is, for two months, the consumer gets free electricity. For supply of such electricity, the Board has to borrow and make payment of interest. If there are no consumer deposits, the tariff shall have to be increased. That will affect all the consumers. Interest at 2% is charged in case of default only in order to ensure proper payment. It is penal in character. In the judgment under appeal, the High Court held that the burden relating to interest can be reflected either in the tariff or could be set off by calling upon the consumer to make deposit. In fact, this Court has upheld the tariff revision effected by Andhra Pradesh Electricity Board as seen from Hindustan Zink Ltd. Vs. Andhra Pradesh State Electricity Board, (1991) 3 SCC 299. It cannot be contended that the three months' consumption deposit is arbitrary. This argument ignores the following important factors:*
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> *(i) This is not a security deposit but a consumption deposit.*

(ii) It is in the nature of an advance payment.

(iii) In the event of failure to pay, it could be proceeded against as seen from clause 28.1.2.

(iv) Consumption deposit is variable as per clause 28.2(iv).

35. If therefore, the object of consumption deposit is to ensure proper payment with reference to electricity supply, there is nothing arbitrary or unjustifiable. The fact that some of the appellants pay large amounts by way of electricity charges will have nothing to do with the nature of deposit. Merely because it is a power based unit, it cannot be treated separately. Nor can the appellant make a virtue out of necessity. The terms of supply relating to consumer deposit must be uniform, therefore, it is not correct to contend that the power based unit must be treated separately."

12. Thus, the demand of ACD has been held to be valid and is an integral condition of supply of electricity.

13. Furthermore, a Division Bench of the Telangana and Andhra Pradesh High Court in the bunch of matter WAs No.968 of 2016 titled as **M/s Sarwottam Ispat Limited Vs. The Southern Power Distribution Company of Telangana Limited, decided on 19.05.2016**, observed as under:-

13. Section 47 of the Act vests power in the distribution licensee to demand security deposit to supply electricity as determined by the regulations. In terms thereof, distribution licensees are collecting security deposit *equivalent to consumption charges on electricity for a period of two months. In a cycle of every 12 months, the licensee reviews the consumption pattern by a consumer and if there is increase in consumption, the licensee demands additional deposit towards increased demand. This section vests power in the licensee to refuse supply of electricity if the consumer fails to provide security deposit or additional security deposit.*

14. Electricity is not a free commodity. The licensee has to purchase from generator. The consumer has to pay for what he consumes. From out of the charges levied from the consumer, the licensee generates revenue. Ordinarily whenever any person purchases a product, he has to pay the value of the product affront. In so far as electricity supply is concerned, the licensee supplies electricity on credit basis and assesses the electricity consumed during a given period and recovers the charges. Discoms extend ordinarily one month credit period and by statutory fiat, the consumer gets one more month to repay the amount for the electricity consumed. In the post consumption pay system licensee runs the risk of recovery of his dues and has to go through rigorous legal procedures. The stark reality is, there are innumerable defaulters. Delay in payment may choke the licensee and can paralyze electricity distribution system. It is not in public interest to paralyze supply of electricity. Thus, to safe guard his interest and in the larger public interest, licensee can demand security deposit for the electricity supplied. Section 47 recognizes this right in no uncertain terms.

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21. Section 47 vests power in the licensee to demand security deposit as condition precedent to supply electricity and stop supply if security deposit/ additional security deposit is not made. Sub Section (5) carves out exception to main provision. It being an exception to the main provision in Section 47, it has to be understood in the limited context i.e. availability of pre-paid meters. The provision in Section 47 (5) has to be understood to mean that if efficient pre-paid meters for HT consumption are available in the market and consumer request for supply of electricity through pre-paid meters, the licensee has to provide meters and in such case, licensee cannot refuse to provide meter and demand for security deposit. Provision in Sub- Section (5) of Section 47 should be read in conjunction with all other provisions of this Act and more particular. Section 55. Availability of efficient pre-paid meters is sine que non for enforcing this provision. As submitted by learned Advocate General (AP) and learned Additional Advocate General (TS) representing respective distribution companies, pre-paid meters are available for LT consumers and on demand said meters are provided, whereas, pre-paid meters with proven technology for HT consumers are not available in the market and therefore they cannot be provided even if a demand is made. We are of the opinion that unless pre-paid meters with proven technology are available to supply electricity to HT consumers, there is no obligation on the licensee to supply those meters.

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25. Section 47 (2) enables the distribution licensee to demand additional security, if the security provided by *the consumer is invalid or insufficient. Sub section 3 further vests power in the licensee to stop supply of electricity if the additional amount demanded is not paid. When this provision vests power in the licensee, a demand made by the licensee in terms there of cannot be held as arbitrary or illegal. As long as pre- paid meters are not installed, it is mandatory for the consumers to pay the security deposit as demanded by the licensee. Therefore, waiving of security deposit merely because a request for provision of HT pre-paid meter is made when no such meters are available does not arise. Such a request is contrary to statutory scheme and liable to be rejected. It is not the case of the petitioners that the amount of deposit demanded is in excess of what is required by the tariff determined by the Regulatory Commission. They cannot insist for supply of electricity without complying with the demand for additional security deposit. Section 47 does not envisage waiver of security deposit nor prescribe alternative mode of providing security, such as bank guarantee. There is no ambiguity in the provision. Thus, there is no scope for playing in the joints to grant the relief of waver/ reduction of deposit. When the statute vests power in the licensee to demand security deposit and licensee exercises such power and no provision is made for waiver/ reduction / alternative mode of providing security, it is not permissible for this Court, in exercise of equity jurisdiction under Article 226 of the Constitution of India, to direct the distribution licensee to dispense with payment of security deposit or to furnish bank guarantee or reduce the security deposit demanded. Contrary to the statutory mandate, no*

> *direction can be issued. When the language of the provision is plain, simple and clear, it is not permissible for the Court to interpret the same in different manner or issue directions contrary to the statutory mandate. No case is made out by petitioners to waive additional security deposit."*

14. A perusal of the statutory provisions as well as the judicial precedents clearly shows that the respondent distribution licensee is entitled to demand consumption deposits and also the additional security when such security has become invalid or insufficient and that any such demand cannot be presumed to be without the authority of law.

15. Learned counsel appearing on behalf of the petitioner failed to establish that the demand of security (ACD) is either contrary to any statutory provision or is in violation of the regulations framed and cannot impugn the demand merely on the basis of apprehensions. The determination of ACD is not a prerogative of the company and it is rather an exercise undertaken by an autonomous body working under the Electricity Act, 2003. A writ petition based upon mere apprehensions which are neither substantiated nor supported by any cogent, convincing, reliable or admissible evidence and in absence of any conflict with the regulatory framework, cannot be a basis to interfere with the demand of revised ACD raised by the respondents.

16. The same leads to the real issue i.e. whether any opportunity of hearing is required to be given or not to the consumer before demanding ACD. The Regulations are a notice to all and there can be no

ignorance of law. The requirement of grant of an opportunity of hearing is vested by a Statute and is integral when any prejudice is caused. A person cannot plead that he is prejudiced by law or an act that is inconsonance with law. The argument thus is without merit.

17. The present petition is, thus, bereft of any merit and is accordingly dismissed in limine.

August 23, 2022. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking / reasoned Yes / No
Whether reportable Yes / No