202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 10.03.2023
Pronounced on : 17.03.2023

CWP-22544-2018

M/S DASMESH ALLOYS .... PETITIONER

V/S

PUNJAB STATE POWER CORP LTD & ORS ... RESPONDENTS

CWP-31365-2018

M/S VARDHMAN INDUSTRIES LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD.(PSPCL) & ORS ... RESPONDENTS

CWP-2188-2018

AVANI TEXTILES LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD (PSPCL) AND OTHERS ... RESPONDENTS

CWP-22261-2019

M/s MAHA LUXMI STEELS .... PETITIONER
V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-22275-2019

M/S MONGA BROTHERS UNIT II .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD (PSPCL) AND ORS ... RESPONDENTS

CWP-25504-2018

M/S BANSAL ALLOYS & METALS PVT . LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) &ORS ... RESPONDENTS

CWP-27928-2018

M/S BHAWANI INDUSTRIES PVT. LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) AND OTHERS ... RESPONDENTS

CWP-23134-2019 (O&M)

M/S INDIAN ACRYLICS LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND OTHERS ... RESPONDENTS

CWP-9063-2019

M/S. VARDHMAN SPECIAL STEELS LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-25524-2018

M/S MITTAL CERAMICS .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) &ORS ... RESPONDENTS

CWP-30959-2019

M/S ROSHA ALLOYS PVT LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-347-2020

M/S PUNJAB ALKALIES AND CHEMICALS LIMITED

.... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) AND OTHERS ... RESPONDENTS

CWP-150-2020

M/S VARUN STEEL CASTINGS PVT. LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) AND ORS ... RESPONDENTS

CWP-33763-2019

M/S JCT LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) AND OTHERS ... RESPONDENTS

CWP-29948-2019

M/S DIDAR STEEL COMPLEX PVT LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-30876-2019

M/S M.R ALLOYS PVT LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-31042-2019

M/S UNIPEARL ALLOYS .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-35237-2019

M/S SATLUJ SPINTEX LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CWP-2330-2020

M/S DASMESH CASTINGS PVT. LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LIMITED (PSPCL) AND ORS ... RESPONDENTS

CWP-6978-2020

M/S JAI MAA BALAJI STEEL INDUSTRIES .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LIMITED (PSPCL) AND OTHERS ... RESPONDENTS

CWP-12194-2021

M/S ALWAR ALLOYS .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD. (PSPCL) ... RESPONDENTS

CWP-21010-2021

M/S C.S. CASTING PVT LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER COPORATION LTD (PSPCL) AND ORS ... RESPONDENTS

CWP-13943-2022

M/S A.N.J METAL RECYCLING PRIVATE LIMITED .... PETITIONER

V/S

PSPCL AND ORS. ... RESPONDENTS

CWP-13941-2022

M/S A.R. CASTING PRIVATE LIMITED .... PETITIONER

V/S

PSPCL AND ORS. ... RESPONDENTS

CWP-14715-2022

S.G. MULTIMETALS .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS.

... RESPONDENTS

CWP-21060-2021

M/S P.P. CASTING .... PETITIONER

V/S

PUNJAB STATE POWER COPRORATION LTD (PSPCL) AND ORS

... RESPONDENTS

CWP-13944-2022

M/S NARINDRA CASTING PRIVATE LIMITED .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS. ... RESPONDENTS

CWP-16909-2022

RAJDHANI IRON PRODUCTS PVT. LTD.

.... PETITIONER

V/S

PUNJAB STATE POWER CORPORATIONLTD. AND ORS ... RESPONDENTS

CWP-19755-2021

M/S RAMJI CONCAST .... PETITIONER

V/S

PUNJAB STATE POWER CORPORATION LTD AND ORS ... RESPONDENTS

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Aditya Grover, Advocate
for the petitioner.

Mr. Ishan Gupta, Advocate
for the petitioner (CWP-2188-2018).

Mr. Pranav Chadha, Advocate and
Mr. Inderpreet Singh, Advocate
for the petitioner (CWP-6978-2020).

Ms. Anu Chatrath, Senior Advocate with
Mr. Nishant Maini, Advocate
for the respondents-PSPCL (CWP-19755-2021).

Mr. Gargi Kumar, Advocate
for respondent No.3-PSERC
(CWP-12194, 21010, 19755, 21060-2021
CWP-13943, 13941, 14715, 13944, 16909-2022).

Mr. Sahil Sharma, Advocate
for the respondents-PSPCL (CWP-23134-2019).

Mr. Akshay Rawal, Advocate
for the respondents No.1 & 2 (CWP-9063-2018).

Mr. Sehaj Bir Singh, Advocate and
Mr. Sunpreet Singh, Advocate
for the respondents-PSPCL
(CWP-22544-2018, CWP-21010, CWP-21060-2021,
CWP-12194-2021).

Mr. Jagdeep Singh Rana, Advocate
for the respondents-PSPCL
(CWP-22544, 25524, 27928, 25504-2018
CWP-35237, 23290, 33763, 30876, 30959, 31042, 22261,
22275, 9063-2019, CWP-6978, 150-2020, CWP-12194-2021).

Mr. Shvetanshu Goel, Advocate
for respondent No.1-PSPCL
(CWP-14715, 13941, 13943, 13944, 16909-2022).

Mr. Vishal Chaudhri, Advocate
for respondent-PSERC
(CWP-22544, 31365, 2188, 25504, 27928, 25524-2018
CWP-22261, 22275, 9063, 30959, 33763, 29948,
30876, 31042, 35237-2019
CWP-347, 150, 2330, 6978-2020)

Mr. Parminder Singh, Advocate
for respondents No.1 & 2-PSPCL (CWP-29948-2019).

Mr. H.S.Sitta, Advocate
for the respondent-PSPCL (CWP-2188-2018).

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PANKAJ JAIN, J.

1. The present bunch of writ petitions involves a common question of law in the background of similar set of facts and circumstances and is thus being decided by this common order.

2. All the petitioners are involved in industrial production. They consume electricity and are thus consumers in terms of Section 2 (15) of the Electricity Act, 2003 (for short the 2003 Act). Respondent-Corporation has been authorized to operate and maintain distribution system for supplying electricity in the area where the petitioners are based, thus respondent-Corporation is distribution licensee in terms of Section 2 (17) *qua* the petitioners. The petitioners are being provided post paid meters to measure their consumption. They are required to deposit advance consumption deposit (ACD).

3. In terms of Section 47 (1) of the 2003 Act, the distribution licensee is empowered to require reasonable security from a consumer who requires

supply of electricity. Such reasonable security has to be determined by Regulations under the 2003 Act. Section 47 (2) of the 2003 Act further provides that in the event of failure on part of the consumer to deposit the security as provided under Section 47 (1) of the 2003 Act the licensee may, by notice, require that person, within thirty days to give him reasonable security for the payment of all monies. Section 47 (3) of the 2003 Act further provides that in case the consumer fails to give such security deposit despite demanded under Section 47 (2) of the 2003 Act, the licensee may discontinue the supply of electricity for the period during which the failure continues. Section 50 of the 2003 Act provides for the Electricity Supply Code. In terms of Supply Code, 2014 notified by the Punjab State Electricity Regulatory Commission on 05.11.2014 the consumer is required to maintain a security (consumption) with the distribution licensee of an amount equivalent to consumption charges for 2 ½ months where bi-monthly billing is applicable and where it is a case of monthly billing, the amount is equivalent to consumption charges of 1 ½ month during the subsistence of agreement for supply of electricity.

4. All the petitioners have been asked to pay the security and have received notices. Learned counsel for the petitioners rely upon provision as contained in Section 47(5) of the 2003 Act and submit that since they are prepared to take supply through a prepaid meter they should not be made liable to onerous condition as contemplated under Section 47 (1) of the 2003 Act.

5. Mr. Ishan Gupta, learned counsel for the petitioners has argued that the respondent-Corporation is denying them benefits under Section 47 (5) of the 2003 Act on the ground that the prepaid meter system has not been adopted by the Corporation and thus the petitioners despite being not in position to pay large

money of Rs.45-50 lakhs are being subjected to coercive steps even though the Act provides that where a consumer is ready to take the supply through a prepaid meter. Learned counsel for the petitioners has submitted that fault lies with the Corporation for having delayed adoption of prepaid meter system but it is the petitioners who are being made to pay for it. Learned counsel for the petitioners has relied upon judgments passed in ***Universal Air Products Private Ltd. Vs. Bangalore Electricity Supply Company Limited (2020) 2 AIR Kar R 597, M/s Maruti Steel Moulding Pvt. Ltd. Vs. OERC, Orissa (2016) 1 Ori. Law Rev. 389, Laxmi Business and Cement Company Pvt. Ltd., Vs. Jharkhand State Electricity Board (Jharkhand) (2013) 126 AIC 520*** and ***M/s T&T Metals Pvt. Ltd. Vs. Jharkhand State Electricity Board (Jharkhand) (2015) 4 JCR 550.***

6. *Per contra* learned counsel for the respondents-Corporation have reiterated their stand taken in the written statement claiming that majority of the petitioners are getting supply from high tension wires. The technology with respect to prepaid meters is not fool-proof as yet. It has been asserted that since the Corporation is already paying interest on ACD as specified by the State Commission thus no prejudice is being caused to the petitioners. It has been further claimed that the State Commission has already kept the time frame for provisioning of prepaid meters open ended, which is binding on the answering respondents and the consumers. Once facility of prepaid metering will be implemented the practice with respect to deposit of ACD is bound to be discontinued. It has been further claimed that the boggy of prepaid meter is being raised by the petitioners only to wriggle out of their liability to deposit the security as contemplated under Section 47 (1) of the 2003 Act. It has been

argued that the respondent-Corporation being not equipped to provide for prepaid meter cannot be forced to do so. However, at the same time learned counsels representing respondent-Corporation are candid in admitting that provision as contained in Section 47 (5) of the 2003 Act is mandatory.

7. Respondent No.3-The Punjab State Electricity Regulatory Commission (PSERC) has relied upon regulation 21.2.7 and 16.3 of the Supply Code, 2014 to contend that as and when facility of prepaid meters will be extended to the consumer and the consumer opts for the same only then shall such consumers be exempted from payment of security (consumption).

8. I have heard learned counsel for the parties and have gone through the records of the case.

9. The question involved in the present writ petition that needs to be canvassed is: *Can a person who is prepared to take supply of electricity through a prepaid meter be subjected to security as contemplated under Section 47 (1) of the 2003 Act or not?*

10. In order to adjudicate upon the aforesaid issue it will be apt to peruse the frame work of the 2003 Act. Relevant provisions thereof read as under :-

> "***Section 43. Duty to supply on request.*** *--- (1) 3[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*
>
> *Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*
>
> *Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*

1[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

***Section 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 -*

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to 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.

Section 181 Powers of State Commissions to make regulations: *--- (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*

(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: -

(a) period to be specified under the first proviso of section 14;

(b) the form and the manner of application under sub-section (1) of section 15;

(c) the manner and particulars of application for licence to be published under sub-section (2) of section 15;

(d) the conditions of licence section 16;

(e) the manner and particulars of notice under clause(a) of sub-section (2) of section 18;

(f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18;

(g) levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32;

(h) rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to section 36;

(i) payment of the transmission charges and a surcharge under sub-clause (ii) of clause(d) of sub-section (2) of section 39;

(j) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39;

(l) payment of the transmission charges and a surcharge under sub clause(ii) of clause (c) of section 40;

(m) reduction 2[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;

(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40;

(o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;

(p) reduction 3[***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;

(q) payment of additional charges on charges of wheeling under subsection (4) of section 42;

(r) guidelines under sub-section (5) of section 42;

(s) the time and manner for settlement of grievances under sub-section (7) of section 42;

(t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43;

(u) methods and principles by which charges for electricity shall be fixed under sub-

section (2) of section 45;

(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;

(x) electricity supply code under section 50;

(y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51;

(z) duties of electricity trader under sub-section (2) of section 52;

(za) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57;

(zb) the period within which information to be furnished by the licensee under sub-section (1) of section 59;

4[(zc) the manner of reduction of cross-subsidies under clause (g) of section 61;]

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

(ze) details to be furnished by licensee or generating company under sub-section (2) of section 62;

(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;

(zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;

(zh) issue of tariff order with modifications or conditions under sub-section(3) of section 64;

(zi) the manner by which development of market in power including trading specified under section 66;

(zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91;

(zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;

(zl) rules of procedure for transaction of business under sub-section (1) of section 92;

(zm) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128;

(zn) the manner of service and publication of notice under section 130;

(zo) the form of preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127;

(zp) any other matter which is to be, or may be, specified. (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication."

11. Section 47 (1) of the 2003 Act provides that a person requiring a supply of electricity in pursuance of Section 43 of the 2003 Act may be

subjected to reasonable security as may be determined by regulations. Section 43 of the 2003 Act provides for a statutory duty of a distribution licensee to give supply of electricity as provided under the Act. Section 181 empowers the State Commission to make regulations by notification consistent with the 2003 Act. Section 181(2) (v) of the 2003 Act provides that such regulations may provide for reasonable security payable to the distribution licensee under sub Section (1) of Section 47. Exercising the aforesaid power State Commission has provided for security under Section 47 (1) in Regulation 16 of the Supply Code, 2014 vide notification dated 05.11.2014. The same reads as under :-

"PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
Notification
The 5th November, 2014

No. PSERC/Secy/Regu.97 - In exercise of the powers conferred under Section 181 read with Sections 43, 44, 45, 46, 47, 48, 50, 55, 56, 57, 58, 59, 126, 127, 135, 152, 154 cfr 163 of the Electricity Act, 2003 (Central Act 36 of 2003) read with Electricity (Amendment) Act, 2007 (No. 26 of 2007) and all other powers enabling it in this behalf and in compliance of Electricity (Removal of Difficulties) Order, 2005, issued by the Ministry of Power Government of India bearing NO.S.0.7.90 (E) dated 8th June 2005, the Punjab State Electricity Regulatory Commission hereby makes the following Regulations on Electricity Supply Code and Related Matters: -

16. REVIEW OF SECURITY (CONSUMPTION) & PAYMENT OF ADDITIONAL SECURITY (CONSUMPTION)
16.1 After release of connection, all consumers shall maintain as Security (consumption) with the distribution licensee an amount equivalent to consumption charges (i.e. fixed and variable charges as applicable) for two and a half months where bi-monthly billing is applicable and one and a half month in case of monthly billing, during the period of agreement for supply of electricity.

16.2 Whenever spot billing is introduced for any category of consumers in any area of operation of the licensee, the Security (consumption) shall be *maintained on the basis of consumption charges for two months for bimonthly billing and one month for monthly billing categories. Excess amount of Security (consumption) in respect of existing consumers shall be refunded by the distribution licensee by adjustment against any outstanding dues and/or any amount becoming due to the distribution licensee immediately thereafter.*

16.3 The distribution licensee shall not be entitled to demand Security (consumption) from any consumer requiring supply of electricity through a pre-paid meter as and when such a facility is provided.
Provided that in the case of an existing consumer who opts for supply of electricity through a pre-paid meter, the distribution licensee shall refund the Security (consumption) including interest charges of such consumer by adjustment against any outstanding dues and balance amount, if any, shall be refunded through cheque to the consumer.

16.4 The adequacy of the amount of Security (consumption) in accordance with regulation 16.1 of these Regulations shall be reviewed by the distribution licensee after every three years (preferably after revision of tariff for the relevant year) based on the average monthly consumption for the twelve months period from April to March of the previous year except for HT/EHT consumers in whose case review of Security (consumption) shall be carried out annually.
In case of new connection less than one year old, the first review shall be carried out only after 12 months consumption from April to March is available with the distribution licensee.

16.5 Notice for additional security (Consumption)
16.5.1 Based on a review as per regulation 16.4, demand for shortfall or refund of excess Security (consumption) shall be effected by the distribution licensee from/to the consumer. Provided, however, that if the Security (consumption) payable by the consumer is short or excess by not more than 10% of the existing Security (consumption), no action shall be taken.
16.5.2 If the Security (consumption) payable by a consumer after review as per regulation 16.4 is found to be short by more than 10-of the existing Security (consumption), the distribution licensee shall refund the excess amount to such consumer by adjustment against any outstanding dues and/or any amount becoming due to the distribution licensee immediately thereafter.
16.5.3 Where the consumer is required to pay the additional Security (consumption), the distribution licensee shall issue to the consumer a separate

notice cum bill specifying the amount payable along with supporting calculations.

16.5.4 The consumer shall be liable to pay the additional Security (consumption) within thirty (30) days from the date of service of the notice.
16.5.5 In the event of any delay in payment, the consumer shall for the actual period of default pay interest thereon at twice the State Bank of India's (SBI's) Base Rate prevalent on first of April of the relevant year plus 2% without prejudice to the licensee's right to disconnect supply of electricity, under these Regulations.

16.5.6 In case, demand for additional security (consumption) is included in the current energy bill instead of separate notice cum bill as mentioned in regulation 16.5.3, then distribution licensee shall not be authorized to take punitive actions as provided in regulation 16.5.5."

12. It is in terms of this regulation that the demand has been raised by the respondent-Corporation i.e. distribution licensee. A bare perusal of Section 47(1) of the 2003 Act makes it abundantly clear that the provision contained in Section 47 (1) of the 2003 Act is subject to other provisions contained in the said Section including 47 (5) of the 2003 Act.

13. Despite having conceded that the provision contained in Section 47(5) of the 2003 Act is mandatory. Respondents rely upon regulation 16.3 to contend that provisioning of prepaid meter and exemption from consumption security on the basis thereof is qualified by, “as and when such a facility is provided”.

14. In the considered opinion of this Court, the arguments raised at the hands of the respondents-Corporation is misplaced. For the sake of repetition it must be reminded that Section 47(1) of the 2003 Act is subject to the provision contained in Section 47 (5) and not *vice versa* and secondly power to make regulation vested in the State Commission is governed by the provisions

contained in Section 181 of the 2003 Act. The Commission is provided with an authority to make regulation for reasonable security payable to a distribution licensee under Sub Section 1 of Section 47. Further Section 181(2) (w) of the 2003 Act provides for regulation *qua* payment of interest on security under sub-section (4) of Section 47 of the 2003 Act. There is no power vested in the State Commission to formulate any regulation with respect to provision contained in Section 47 (5) of the 2003 Act. Since provision contained in Section 47 (1) of the 2003 Act is subject to that of Section 47 (5) of the 2003 Act, regulations framed for the purpose of Section 47(1) of the 2003 Act can have no effect over Section 47(5) of the 2003 Act.

15. This Court also finds support from Division Bench judgment of Karnataka High Court in ***Universal Air Products Private Ltd.'s case supra*** *wherein* it has been held as under **:-**

> *"3. Learned Counsel for the appellant draws the attention of this Court to a* ***judgment dated 24.07.2018 in W.A.Nos.6090-91/2017 in the case of Bangalore Electricity Supply Company Limited and Another Vs. M/s.Vijaya Steels and Others,*** *where a co-ordinate Bench of this Court upheld the decision of the learned Single Judge in W.P.No.13836/2015 noticing that in view of Sub- section (5) of Section 47 of the Electricity Act, 2003, if the person requiring the supply is prepared to take the supply through a pre-paid meter, he shall not be liable to furnish security as contemplated under Clause (a) of Sub-section (1) of Section 47. It was noticed that if the consumer is prepared to take the supply through a pre-paid meter, and as Prepayment meter was presently not available, it was held that respondent-BESCOM should supply electricity to the consumer by collecting approximate monthly energy charges in advance without insisting for any security as contemplated under Clause (a) of sub-section (1) of Section 47 of Electricity Act, 2003. It was also directed by the learned Single Judge that the amount of the petitioner lying in deposit with the respondent-BESCOM shall be adjusted towards energy charges. When the respondent-BESCOM took up the matter in appeal, the co-ordinate Bench in W.A.Nos.6090-91/2017 noticed that the submissions of the respondent-BESCOM that no prepayment meters for High Tension Consumers (HT-IIA)*

> *was available and proceeded to uphold the decision of the learned Single Judge in W.P.No.13836/2015. Further by* ***order dated 16.12.2019 in Review Petition No.53/2019 in the case of M/s.Bangalore Electricity Supply Company Limited and Another Vs. M/s.Vijayaa Steels and Others,*** *this Court dismissed the review petition preferred by the respondent-BESCOM."*

16. Having held that the provision as contained in Section 47 (5) of the 2003 Act is mandatory and shall have a place of pride over Section 47 (1) of the 2003 Act, the practical difficulty being faced by Corporation also cannot be overlooked. Though it was for the Corporation to represent to the Central Government to invoke Section 183 of the 2003 Act and issue order for removal of this difficulty. However, now it being too late in the day this Court finds that the rights of the petitioners as borne out from Section 47 (5) of the 2003 Act and the practical difficulty being faced by the Corporation need to be harmoniously balanced. Thus in order to balance the same, it will be appropriate that the petitioner/s who is prepared to take supply through prepaid meter be asked to deposit advance amount equivalent to average monthly consumption based upon 12 months preceding the date of 01.04.2023. In the case of seasonal industry, the average monthly consumption will be calculated for the months the industry is in operation and consumes energy. For example, for the plant working for 6 months, the average monthly consumption shall be for such six months and not annual.

17. The respondent-Corporation i.e. distribution licensee shall keep on supplying electricity to the petitioners by collecting such monthly energy charges in advance without insisting upon security as contemplated under Clause (a) of sub section 1 of Section 47 of the 2003 Act. Any amount of the petitioner, if lying as security with the respondent-Corporation shall be adjusted

towards energy charges. The aforesaid arrangement shall continue till respondent-Corporation is equipped for providing prepaid meter to the petitioner.

18. Needless to say wherein the actual consumption charges are beyond the amount deposited at the beginning of the month, the differential shall be payable at the time of advance deposit for next month and likewise where advance exceeds consumption charges the residual will be adjusted for the next month's advance payment.

19. Writ petitions are disposed off accordingly.

20. Photocopy of this order be placed in the connected files.

(PANKAJ JAIN)
JUDGE

17.03.2023
Pooja sharma-I

Whether speaking/reasoned Yes
Whether Reportable : No