

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 225 of 2016

Dated : 31st January, 2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No. 225 OF 2016

SHREE CEMENT LIMITED

(Through its General Manager (Power Business))

Bangur Nagar, Beawar,
District Ajmer,
Rajasthan – 305901

Works At:

Village- Khapradih,
PO Grasim Vihar,
Teh.- Simga, District Baloda Bazar
Chhattisgarh – 493196

... Appellant(s)

Versus

**1. CHHATTISGARH STATE ELECTRICITY REGULATORY
COMMISSION**

(Through its Secretary)

Irrigation Colony,
Shanti Nagar
Raipur - 492001

2. CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD

(Through its Managing Director)

Danganiya, Raipur - 492014

... Respondent (s)

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| Counsel for the Appellant(s) | : | Mr. Kumar Mihir Mr. Avinash Menon for App. 1 |
| Counsel for the Respondent(s) | : | Mr. Ritesh Khare for Res. 1 Mr. Pradeep Misra for Res. 2 |

JUDGEMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The short question which arises for consideration of this Tribunal in this Appeal is whether the interest on the security deposited by new consumer with the Power Distribution Company is payable from the date of deposit of the amount of security or from the date of commencement of electricity supply to the consumer i.e. from the commencement of the business between the parties.

2. Facts in brief, which are necessary for disposal of the appeal, are that the Appellant Company is engaged in manufacture of cement having its integrated cement plant at village Khapradih, PO Grasim Vihar, Distt. Baloda Bazar in the State of Chattisgarh. The 2nd Respondent is the Distribution Licensee in the State of Chattisgarh. The Appellant applied for two separate electricity connections from the 2nd Respondent for the

purposes of its plant, one connection for 15 MVA demand at 132 KV line for the plant operations and another for 15 MVA at 33 KV line for construction purpose. Vide letter dated 15th October, 2013, the 2nd Respondent conveyed approval of the supply of EHT demand of 15 MVA at 132 KV line to the plant of the Appellant and asked to pay security deposit. Accordingly, the Appellant deposited an amount of Rs.2.23 crores on 29th November, 2013 as security. Respondent No. 2, vide letter dated 2nd July, 2014, conveyed the approval of another connection for supply of EHT demand to the extent of 15 MVA at 33 KV to the Appellant's plant and again asked it to deposit further security amount. The Appellant once again deposited further amount of Rs.4.40 crores on 10.11.2014 as further security. Thus, the Appellant has deposited at total an amount of Rs.6.63 crores with the 2nd Respondent towards security for both the connections.

3. According to the Appellant, it was eligible to get interest on the security deposit of Rs.2.23 crores for the period 29.11.2013 to 31.03.2014 which was to be reflected in the bill for the month of May, 2014 but no credit for such interest was provided in the said bill. It sent letters dated 22nd May, 2014 and 21st November, 2014 to Respondent No.2 requesting for computation and payment of interest on the security deposit from the date of deposit itself but the Respondent vide its letter dated 12.01.2015,

rejected the demand of the Appellant stating inter alia that the interest on a security deposit is payable from the date of commencement of the agreement i.e. the date of commencement of the electricity supply. The Appellant also claims to be entitled to receive interest on the total security deposit Rs.6.63 crores from 10.11.2014 onwards. However, credit of only Rs.10.61 lakhs (gross interest amount of Rs.11.79 lakhs - TDS amount) was given towards interest amount on the security deposit in the bill received by the Appellant in the month of May, 2015 which indicates that the interest on the security deposit has been computed by the 2nd Respondent from the date of charging of the EHT line and not from the date of actual deposit.

4. Since the Appellant did not receive any proper response from the 2nd Respondent to its letters as well as its representations, it approached the office of Chairperson, Electricity Consumers Grievances Redressal Forum by way of a complaint on 19th June, 2019 which was disposed off by the Forum vide order dated 26th October, 2015 observing inter alia that the key issue in the subject matter was related to the definition of consumer and the same was beyond the purview of the Forum. Accordingly, the Appellant approached the 1st Respondent, Chhattisgarh State Electricity Regulatory Commission by way of Petition under Regulation 13.21 of the Chhattisgarh

State Electricity Supply Code, 2011 providing power to the Commission to remove difficulties, on 17th December, 2015 with the prayer to specify the date from which, the interest is payable on the security deposit under Regulation 6.13 of the Supply Code.

5. Vide the impugned order dated 17th June, 2016, the Commission has held that the interest on the security deposit is payable from the date of commencement of business of electricity supply to the consumer and not from the date of deposit of the security amount.

6. Learned Counsel for the Appellant vehemently argued that the impugned order of the Commission is erroneous and cannot be sustained in law. Referring to Section 4 of the Interest Act, 1978, the Learned Counsel submitted that interest on the security deposit made in terms of Section 47 of the Indian Electricity, Act, 2003 read with Regulation 6.13 of Chhattisgarh State Electricity Supply Code, 2011 is payable from the date of deposit of the security amount. He would further submit that any person who has made a security deposit with the Distribution Licensee is entitled to get interest on the same and the payment of interest is not depending on whether/when the said person actually starts getting electricity supply and becomes a consumer of the Distribution Licensee. He argued that the Commission has failed to consider that the Distribution Licensee itself is earning interest on

the security deposit of the consumer or is utilizing the same towards its working capital thereby saving interest thereupon from the date it receives the security amount from the consumer and therefore, it cannot escape liability for payment of interest on the said security amount to the consumer from the date of deposit by the consumer.

7. It is his submission that since the 2nd Respondent has not brought on record anything to show that the security amount received from the Appellant was kept unutilized by it and no benefit was derived from it till the energization of the connection w.e.f. 15th January, 2015, it has to be presumed that the Respondent had utilized the said security amount for its business purpose thereby reducing its loan requirement, especially its short-term borrowings to meet its working capital requirement and, therefore, has benefitted financially from the same. He argued that there is nothing in the Electricity Act or in the Supply Code to hold that the interest on the security deposit is not payable from the date of deposit itself.

8. On the other hand, it was submitted on behalf of the 2nd Respondent that perusal of Section 47(1) of the Electricity Act, 2003 and clause 6.14 of the Supply Code makes it clear that the security deposit will come into play from the date of grant of electricity connection to the consumer and thus interest on the same would be payable from the date of commencement of

the Electricity Supply. According to the Learned Counsel, the Distribution Licensee, while accepting security deposit from a consumer, does not act as a banker and does not appropriate the security deposit amount in a fixed deposit on behalf of the intended consumer and, therefore, all such deposits do not carry interest from the date of deposit itself. He submitted that security deposit is required by the Distribution Licensee for setting up of infrastructure for the purposes of supply of electricity to the consumers and in case they are directed to pay interest on the security amount from the date of deposit itself, their business would be akin to banking business which is against the spirit of the Electricity Act as well as the Supply Code.

9. To buttress his submissions, the Learned Counsel relied upon the judgements of the Hon'ble Supreme Court in Popatlal Shah vs. State of Madras, AIR 1953 SC 274 and Bhavnagar University vs. Palitana Sugar Mill Private Limited (AIR 2003 SC 511).

10. We have considered the rival submissions made on behalf of the parties by their Learned Counsels and have perused the impugned order of the Commission as well as the entire record.

11. Before proceeding to analyse the submissions of the Learned Counsels, we feel it necessary to reproduce Section 47 of the Electricity Act, 2003 hereunder :-

“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 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 subsection (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.”

12. Thus, sub-section (4) of Section 47 makes it obligatory for the Distribution Licensee to pay interest on the security amount received from a person requiring electricity supply.

13. We also find the Regulations 6.1, 6.2, 6.13, 6.14, 6.15 & 6.16 of Chattisgarh State Electricity Supply Code, 2011 relevant on the aspect under consideration and the same are reproduced hereunder :-

“6.1 A licensee may require security deposit from any person who requires supply of electricity as per provisions of clause (a) of sub-section(1) of section 47 of the Act.

6.2 The security deposit shall be accepted in the form of cash, draft or cheque. In case of cheque, commencement of supply will be effected only on realization of the cheque.

6.13 The licensee shall pay interest as per directive / guidelines of Reserve Bank of India (RBI) on the security deposits. It shall be the responsibility of the licensee to ascertain the such rate from RBI and to inform the consumers through the billing mechanism.

6.14 The amount of interest shall be calculated in April every year for the preceding year. The interest amount so calculated shall be paid by way of adjustment in full against the monthly electricity bill for the month of May of that year and if so required in the bills for subsequent months.

6.15 In case of delay in payment of interest on security deposit, the licensee shall be liable to pay an interest on the amount of interest at the rate of 1% per month or part thereof by way of simple interest.

6.16 In case of delay/exceeding a period of three months in adjustment of interest on security deposit, the consumer may lodge a complaint in the concerned Consumer Grievance Redressal Forum as constituted under sub section (5) of section 42 of the Act by the licensee.”

14. Thus in terms of Regulation 6.13 of the Supply Code, the Distribution Licensee is required to pay interest on the security deposits as per the directives/guidelines of Reserve Bank of India (RBI). However, what is noticeable from the perusal of these provisions of the Electricity Act as well as the Supply Code is that the date from which interest on the security amount is payable by the Distribution Licensee to the consumer has not been given.

15. The reasoning which has lead the Commission to hold that the security deposit of a consumer does not carry interest from the date of

deposit itself, can be found in paragraph number 25 & 26 of the impugned order of the commission which are reproduced hereunder :-

“25. The provision of interest on security deposit does not apply, in case of applicant for new connection. We are in agreement with the contention of the distribution licensee i.e. the respondent that a distribution licensee does not gain anything from the money deposited as security deposit. The security deposit of an applicant of new connection works only as security to ensure that, applicant will avail the connection. Further, the licensee has to incur loss on account of non-utilization of its system’s capacity, which is kept reserve for the applicant and no business is carried out on such reserve capacity. The licensee is not a banker and therefore, it would not be appropriate to ask the licensee to give interest on security deposit, from the date of the amount deposited. If, the interest provided from the date of deposit the distribution business of licensee would have turned into the business of banker.

26. At this moment, it is also to be keep in mind that, electricity is a goods, which cannot be stored. If, it is generated it has to be used, otherwise it would be lost.”

16. We feel unable to agree to these observations of the Commission.

17. We note here that “Security Deposit” as commonly known, is a sum of money paid by one party (the depositor) to another party (the Depository) for the purpose of securing the performance of obligations of the depositor. In the case of Electricity Supply Agreements, the consumer is required to deposit certain security with the Distribution Licensee in order to secure the payment of electricity bills for the reason that Electricity is supplied to a consumer in advance and the bills are raised later on. It cannot be gainsaid

that while the money i.e. the security amount deposited by the consumer, is with the Distribution Licensees, the licensee is at liberty to use the same as per its needs without any interference from the consumer. Therefore, even if the Distribution Licensee cannot be said to be a banker, one cannot lose sight of the fact that the security amount deposited with it by the consumer is at its disposal right from the date of deposit by the consumer and can be appropriately used by it in whatever manner it deems fit and necessary from the date of deposit itself. It may utilize it for setting up of its infrastructure, payment of loan (long-term as well as short-term) installments or may keep the same in a fixed deposit with its bank. In any case, the licensee would be utilizing the said security amount of the consumer for its financial benefit and, therefore, cannot be permitted to avoid its liability to pay interest on the same from the date of its deposit.

18. Payment of “interest” cannot be equated to payment of penalty or fine. “Interest” is normal accretion to money when invested lawfully by the person in whose hands it is. When the consumer deposits the security amount with the Distribution Licensee, the money leaves his pocket and goes to the pocket of the licensee which invests/utilizes it as per its requirement. Therefore, since there is provision for payment of interest on such security amount under the Electricity Act as well as the Supply Code,

the consumer would be entitled to interest from the very date on which he deposits the amount with the Distribution Licensee.

19. Here we also find it apposite to refer to the relevant provisions of the Interest Act, 1978 Sections 2 & 4 of the Act which are reproduced hereunder:-

2. Definitions.—*In this Act, unless the context otherwise requires,—*

- a. *“court” includes a tribunal and an arbitrator;*
- b. *“current rate of interest” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).*
Explanation.—In this clause, “scheduled bank” means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);
- c. *“debt” means liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;*
- d. *“personal injuries” includes any disease and any impairment of a person’s physical or mental condition;*

all other words and expressions used herein but not defined and defined in the Reserve Bank of India Act, 1934 (2 of 1934), shall have the meanings respectively assigned to them in that Act.

4. Interest payable under certain enactments.—(1) *Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.*

(2) *Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely:—*

(a) *where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;*

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.”

20. Sub-section (a) of Section 2 of the Act, makes it applicable to the Tribunals also. Sub-section (2) (a) of Section 4 of the Act clarifies that where the money or other property has been deposited as security for the performance of an obligation imposed by law or contract, the interest shall be payable from the date of deposit itself. In the absence of any specific provisions in the Electricity Act or the Supply Code relating to the date from which interest on the security deposit of the consumer is payable, we see no reason for not applying these provisions of the Interest Act, 1978, reproduced herein above, to such deposits also.

21. In the case of Popatlal Shah (supra), the Hon'ble Supreme Court has observed that it is a well settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase, or sentence is to be considered in the light of the general purpose and object of the Act itself. The title and preamble whatever their value might be as aids to the construction of a statute,

undoubtedly throw light on the intent and design of the legislation and indicate the scope and purpose of the legislation itself.

22. In the case of Bhavnagar University (supra) the Hon'ble Supreme Court has observed that it is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary that no part thereof shall be rendered surplus or redundant.

23. We have already noted herein above that both the Electricity Act (Section 47 sub-section 4) and Chattisgarh State Electricity Supply Code (Regulation 6.13) make it obligatory upon the Distribution Licensee to pay interest to the consumers on the security deposits as per the directives/guidelines of the Reserve Bank of India. As per common practices of the trade and as well as per the provisions of the Interest Act, 1978, the interest on the security deposit is payable by the depository to the depositor from the date of deposit itself. Had it been the intention of Parliament while enacting the Electricity Act and of the Chattisgarh State Electricity Regulatory Commission while framing the Supply Code 2011 to provide for

payment of interest on the security deposit of the consumers from the date of commencement of the electricity supply, it would have been mentioned specifically in the Act as well as in the Code. A meaningful and harmonious reading the relevant provisions of the Electricity Act as well as the Supply Code in conjunction with the Interest Act, 1978 would clearly reveal that interest on the security deposits of the consumers of electricity is also payable from the date of deposit itself and not from the date of actual supply of the electricity to the consumer.

24. Further in the instant case, no document has been produced by the 2nd Respondent either before the Commission or before this Tribunal to show the manner in which it has dealt with the security amount of Rs.6.63 crores deposited by the Appellant with it. In the absence of any material on record, it can be safely assumed that the Respondent Licensee had utilized the said amount of Rs.6.63 crores for its financial benefit right from the date of deposit itself and thus cannot avoid the liability of payment of interest on the said amount to the Appellant from the date it received the amount from the Appellant.

25. Hence, the impugned order of the Commission is not sustainable in the eyes of law. The same is hereby set aside.

26. We hereby hold and clarify that interest on the security amount deposited by a consumer with the Distribution Licensee for obtaining an electricity connection is payable from the date of deposit itself and not from the date of commencement of electricity supply to the consumer.

27. Appeal stands allowed accordingly.

Pronounced in the open court on this 31st day of January, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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