FERRO ALLOYS CORPN. LTD. AND ORS. ETC. ETC. A

v.

A.P. STATE ELECTRICITY BOARD AND ORS ETC. ETC.

APRIL 15, 1993

[K. JAYACHANDRA REDDY AND S. MOHAN, JJ.] B

Elecricity Supply Act, 1948: Sections 2(b) (v), 49, 59, 79, Schedule VI—Clause 14.

Section 49—Whether unconstitutional for want of guidelines for terms and conditions of supply of electricity. C

Indian Electricity Act, 1910:

Indian Electricity Rules, 1956: Rule 27.

Interest Act, 1978: Section 4(2). D

Electricity Boards—General terms and conditions of supply of electricity—Condition of Consumption Deposit—Whether arbitrary—Whether Board has power to make Regulations to demand security deposit—Nature and object of consumption deposit—What is Electricity Board—Whether liable to pay interest on Consumer Deposit—Rate of Interest on Consumption Deposit—Whether should be same as paid by Scheduled Bank—Clause in General Terms and Conditions providing for non payment of interest on Consumption Deposit—Whether unconstitutional and arbitrary—Demand for additional Consumer Deposit—Reasonableness of—Electricity Board—Whether should give reasons for additional demand. E F

Indian Trusts Act, 1882: Section 90.

Relationship between Electricity Board and Consumers—Whether of Trustee and Beneficiary. G

Practice and Procedure—Interlocutory order passed by a Bench of 3 Judges—Whether binding on a Bench of 2 Judges.

H

A *Consititution of India, 1950 : Article 12.*

Electricity Boards are State.

Words and Phrases:

'Unconscionability'—'Deposit'—'Interest'—Meaning of.

B **Under the General Terms and Conditions for supply of electricity notified by the Andhra Pradesh State Electricity Board, under Section 49(1) of the Electricity (Supply) Act, 1948, the consumers were obliged to keep with the Electricity Board an amount equivalent to three month's demand and energy charges as consumption deposit** C **on which interest at the rate of 3% per annum was payable by the Board. In the event of delay in payment of consumption deposit within the stipulated period not only surcharge was payable by consumer but also the supply was liable to be disconnected. Various petitions were filed before Andhra Pradesh High Court challenging the validity of terms and conditions contending that the consumption deposit should** D **in no event exceed two months average consumption charges and that in view of the judgment of Supreme Court in *M/s. Jagdamba Paper Industries* v. *H.S.E.B. Board,* [1983] 4 S.C.C. 508, the Board was liable to pay interest at the same rate as is paid by a Scheduled Bank on fixed deposit. The High Court dismissed the petitions.**

E

In appeals to this Court, it was contended on behalf of the consumers that: (1) Section 49 of the Electricity (Supply) Act is unconstitutional since there are no guidelines for framing the terms and conditions of supply of electricity; (2) in view of the fact that in F **case of power intensive consumers the cost of Electricity is very high, the condition requiring 3 months' security deposit is arbitrary and illegal for power intensive consumers; and (3) there is no power under the Electricity Supply Act to enable the Board to raise revenue or to cover its capital cost etc. except by way of adjusting tariffs as seen from under Section 59 of the Supply Act, 1948. Therefore, consumption** G **deposit cannot be used for the purpose of revenue or raising revenue.**

On behalf of the Electricity Board it was contended that: (1) in view of the fact that the object of consumption deposit (which is in the nature of advance payment and not a security deposit) is to ensure H **prompt payment of electricity supply, it cannot be contended that 3**

month's consumption deposit is arbitrary; (2) the fact that some of the consumers pay large amounts by way of electricity charges has nothing to do with the nature of deposit. Merely because a unit is power based it cannot be treated separately for the terms of supply relating to consumer deposit must be uniform. A

In the case of Rajasthan Electricity Board the General Conditions expressly provided that no interest will be paid by the Electricity Board on security deposit. Futher, the Electricity Board issued notices requiring the consumers to deposit the enhanced amount of cash security as well as bank guarantee on the basis of maximum power consumption. The consumers filed petitions in the Rajasthan High Court contending that provision for no interest was bad in law and that the enhanced security deposit must be calculated not on three months maximum consumption but on the basis of minimum power consumption. A Single Judge of the High Court allowed the petitions. On appeal, the Division Bench held that the clause relating to non-payment of interest was not reasonable. Relying on Section 4 of the Interest Act as well as on the Model Form of draft conditions contained in Schedule VI of the 1948 Act, the Division Bench held that interest was payable on the security deposit. B C D

In appeals to this Court, it was contended on behalf of the Rajasthan State Electricity Board that: (1) there is no statutory provision which casts an obligation on the Board to pay interest on the security deposit; nor even interest is payable under common law or in equity; (2) the High Court erred in relying on the Model Form conditions as well as on the Interest Act; (3) the security deposit for three months is neither unreasonable nor arbitrary; (4) even if the contract between the Board and consumer is adhesion contract, it is not necessarily unconsciable; (5) in *Jagdamba Paper Industries* case the right of interest was based on the concession of parties and the Court had no occasion to decide the rate of interest. E F G

On behalf of the consumers it was contended that: (1) the scheme of the Electricity Act and Supply Act together with the Rules suggest the payment of interest; (2) since the money is deposited bu the consumers with the Board to secure the Board against default in payment of bills, the Board is in the position of a trustee in respect of H

A this money; (3) even under English Law, interest was payable on security for electricity.

For the intervenor on behalf of the Electricity Board of Orissa, it was submitted that Regulation 7 of the Orissa State Electricity Board General Conditions of Supply Regulations 1981 providing that
B no interest would be payable on security deposit is just and reasonable and is not arbitrary or violative of Article 14 of the Constitution.

The Uttar Pradesh State Electricity Board was also paying 3% interest on consumption deposit. The consumers preferred writ
C petitions before the Allahabad High Court claiming 12% interest, but the same were dismissed.

In appeals to this Court it was contended on behalf of the consumers that in a number of matters this Court has also ordered
D interest at the rate of 12% on security deposit and the same principle should apply to this case; (2) if interest is not paid, security deposit cannot be demanded as this will amount to unconscionable bargain; and (3) the security deposit does not contemplate appropriation.

On behalf of the Electricity Board it was contended that: (1) in
E cases where 12 per cent interest was awarded it was only by way of ad interim measure. Therfore, orders are not conclusive on this aspect; (2) under Article 226 of the Constitution, the court is to conduct a limited scrutiny whether by imposing a condition the Board has not acted as a private trader and thereby shed off its public utility
F character. If the Court comes to the conclusion that the Board has not acted as a private trader and the nature of deposit has a rational relationship, the issue will fall outside the scope of judicial purview.

The Bihar State Electricity Board was paying 5% interest on the
G security deposit. The consumers claimed interest at the rate payable on fixed deposit by a nationalised bank and the High Court allowed the same. The Electricity Board filed petition in this Court contending that the High Court erred in awarding a higher rate of interest.

On behalf of the consumers it was contended that the increase in
H security deposit without assigning any reason was bad in law.

In the connected writ petition, the challenge is to the validity of Sections 49 and 79 of the Supply Act.

According to the Punjab State Electricity Board, while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers the consumers also 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 that the consumer owes to the Board constantly and also to ensure timely payment of advances by the Board to its suppliers an advance consumption deposit is insisted upon before commencing supply to the consumer. If this is not so taken the Board will be left with no other option than to increase the tariff. Thus advance deposit cannot be termed as a fixed deposit as the amount cannot be utilised against non-payment of dues from consumers. Besides, the consumers can also ask for the refund. Therefore, Sections 49(1) and 79 (j) cannot be termed as arbitrary.

It was also contended on behalf of the Punjab State Elecricity Board that the amendment to clause 23 of abridged conditions of supply requiring consumers to pay advance consumption deposits is perfectly reasonable.

For the intervenor on behalf of Calcutta Electricity Supply Corporation, it was submitted that the deposit though called security deposit is really an adjustable advance payment of consumption charges. The amount is revisable from time to time depending upon the average consumption charges on the basis of actual consumption over a period. In short, it is in the nature of a running account. The security deposit does not remain in tact like a fixed deposit but gets depleted day after day depending on the extent of consumption. More often than not, the consumption charges and other dues exceed the security deposit. That necessitates calling for additional advance to make up a shortfall. In the absence of any usage or contract or any provision of law requiring payment of interest, interest is not payable for wrongful detention of money. In this case, there is no wrong ful detention [of even.] Section 4(2) of the Interest Act has no application to this deposit.

A **Disposing the petitions, this Court,**

HELD: **1. Section 49 of the Electricity (Supply) Act, 1948 is valid. Sub-section (1) of the said section starts with the words "Subject to the provisions of the Act and all regulations, if any, made in this behalf". Therefore, the Board has to conform to the various provi-**
B **sions of the Act and the regulations. Section 49 contains two powers; (1) to prescribe terms and conditions of supply; and (2) fix the tariff. No guidelines are required in this regard. [278A-248CE]**

Hindustan Zinc Ltd. v. *A.P.S.E.B.*, **1991 (3) S.C.C. 299;** *Mysore*
C *State Electricity Board* v. *Banglore Woollen, Cotton and Silk Mills Ltd.*, **A.I.R. 1963 S.C. 1128;** *Jagdamba Paper Industries Pvt. Ltd.* v. *Haryana State Electricity Board*, **1983 (4) S.C.C. 508, referred to.**

Roberts v. Hopwood, **1925 A.C. 578;** *Pyx Granite* v. *Minister of*
D *Housing and Local Government*, **1958 (1) All E.R. 625, cited.**

1.1. Where regulations are made under Section 49 read with Section 79 (j), the validity of the regulations could be examined by the court, whether they are reasonable or not. [249-D]

E *Southern Steel Ltd., Hyderabad* v. *The Andhra Pradesh State Electricity Board*, **A.I.R. 1990 Andhra Pradesh** *58, and M/s B.R. Oil Mills, Bharatpur* v. *Assistant Engineer (D) R.S.E.B., Bharatpur*, **A.I.R. 1981 Rajasthan 108, referred to.**

F **1.2 The terms and conditions notified under Section 49 must relate to the object and purpose for which they are issued. Certainly, that power cannot be exercised for a collateral purpose. In this view, Section 49 is valid. [251-C]**

G **2. The nature of consumption deposit is to secure prompt payment and is intended for appropriation. 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**
H **the actual consumption over a period. This is the position under the**

terms of supply of energy with reference to all the Boards. [278 A, 252 D-E] A

2.1 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. [253 F-G] B C

2.2 The deposit made cannot be equated to a fixed deposit. In the case of daily supply of electricity, there is a consequential liability to pay for each day's consumption of electricity. To ensure that payment, the security deposit is furnished. Hence, it cannot be equated to a deposit at all. It is in the nature of a running current account. [262-A] D

2.3 The argument that the deposit does not contemplate appropriation is not correct because in the nature of contract it is liable to be appropriated for the satisfaction of any amount liable to be paid by the consumer to the Board for violation of any conditions of supply in the context of wide scale theft of energy, tempering with the meters and such other methods adopted by the consumers. Therefore, the said consumption security deposit serves not only too secure the interest of the Board for any such violation but should serve as a deterrent on the consumer in discharging his obligations towards the Board. [264 F-6) E F

Union of India v. *A.L. Rallia Ram,* [1964] 3 S.C.R. 164; *Riches* v. *Westminister Bank Ltd.* 1947 Appeal Cases 390, held inapplicable. G

2.4 While the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume elecricity 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* H

A **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. In demanding**
B **security deposit, it is open to the court to take note of pilferage. [254 F-H]**

Ashok Soap Factory v. *Municipal Corporation of Delhi*, **J.T. 1993 (1) S.C. 128, referred to.**

C

Corpus Juris Secundum, **Vol. 26 A, p.194,** *Davidson* v. *U.S.*, **C.C.A. Pa., 292 F. 750, 752, referred to.**

2.5 Three month's security deposit cannot be characterised ei-
D **ther unreasonable or arbitrary. [255-F]**

Jagdama Paper Industries P. Ltd. v. Haryana State Electricity Board, **[1993] 4 S.C.C. 508;** *K.C. Works* v. *Secretary A.P.S.E.B., Vidyut Soudha*, **A.I.R. 1979 Andhra Pradesh 291;** *Municipal Corporation for Greater Bombay* v. *M/s D.M. Industries*, **A.I.R. 1984 Bombay 242;**
E *Haryana Ice Factory* v. *Municipal Corporation of Delhi*, **A.I.R. 1986 Delhi 78, referred to.**

Southern Steel Ltd., Hyderabad v. *The A.P. State Electricity Board*, **A.I.R. 1990 Andhra Pradesh 58, approved.**

F

Indian Aluminium Company v. *Karnataka Electricity Board*, **1992 (3) S.C.C. 580, cited.**

2.6 Under the regulations framed by the Board in excercise of
G **powers of Section 49 read with Section 79 (j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If, therefore, the regulations perscribed a security deposit that will have to be complied with. In cases where regulations have not been made Rule 27 of the Rules made under the Electricity**
H **Act enables the adoption of model form of draft conditions of supply.**

Annexure VI in clause 14 states that the licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed in his premises. Thus, the Board has the power to make regulations to demand security from the consumers. [251F-H, 252A-B] A

B

2.7 Under Section 59 the Board is obligated to carry on its operation as to ensure that it generates a surplus of 3 per cent or as specified by the State Government. The Board is obligated to adjust its tariffs for ensuring such surplus. The condition of supply requiring a consumption security deposit has a direct bearing on the operations of the Board which are to be conducted in such a manner as to ensure a surplus. The language in Section 59 of the Supply Act is "carry on its operations under this Act and adjust its tariffs." The language of the said Section is not by adjusting tariff. Therefore, the argument that the only manner in which the Board can achieve a surplus is to adjust its tariffs does not flow from the language of Section 59. So read, in the context of the insistence of a security deposit which has direct bearing on the operations of the Board is *per se* reasonable and constitutional. [266 E-6] C D

Kerla State Electricity Board v. *S.N. Govinda Prabhu & Bros. & Ors.* [1986] 4 S.C.C. 198, cited. E

3. There is no liability on the Electricity Board either under the statute or common law or equity to pay interest on security deposit. [278-B] F

3.1 There is no statutory provision which casts an obligation on the Board to pay interest on security deposit. Model form of draft conditions of supply (containing Clause 14 relating to interest on security deposit) as found in Annexure VI. traceable to Rule 27 of Indian Electricity Rules, 1956, is applicable only to a licensee as defined in Section 2 (4) of the Electricity Act. Even for a licensee it is not compulsory to adopt the model condition of supply. These is an option available to adopt the model conditions of supply with such modifications as the circumstances of each case require. [259 G-H, 260 A-C] G H

A 3.2 Schedule VI has been framed in exercise of powers under Sections 57 and 57A. In defining "clear profit" paragraph (2) of clause XVII, Item (v) makes a reference, as interest on security deposits which is a part of expenditure properly incurred by the licensee. From this, it is impossible to hold that this clause imposes an obligation on the licensee to pay interest on Secwity deposits, All that would when B is, is, if interest, is paid then it qualifies as an item of expenditure properly incurred. This is the position with regard to licensee. But this cannot apply to the Board, which is not a licensee. For the same reason Item L1 (c) of Form IV of the Electricity Rules relating to interest paid and accrued on consumers' security deposits is of no avail because C that relates to the manner of keeping accounts by the licensee, not being applicable to a Board. Therefore, there is nothing to indicate under the scheme of the Electricity Act or Schedule VI of the Supply Act that interest must be paid on the security deposit. Accordingly the Division Bench of Rajasthan High Court has erred in holding that Interest Act is applicable. [260 F-H, 261-A-B]

D

3.3 Section 4(2) of the Interest Act, 1978 has no application to a case where on account of a contractual term or a statutory provision payment of interest is not permitted. A careful reading of Section 4(2) would disclose that it merely enlarges the category of cases mentioned E in Section 4(1). Even otherwise, there is nothing to indicate that Section 4(2) could override other satutory provisions or a contract between the parties. No doubt, Section 4(2) contains a *non-obstante* clause. But, such a clause is restricted to the privisions of Interest Act and cannot extend to other laws or a contract between the parties. F [261 F-6]

Civil Special Appeal No. 83 of 1987, decided on 30th July, 1991 by a Division Bench of the Rajasthan High Court, overruled.

G 3.4 The word 'interest' would apply only to cases where there is a relationship of debtor and creditor. A lender of money who allows the borrower to use certain funds deprives himself of the use of those funds. He does so because he charges interest which may be described as a kind of rent for the use of the funds. For example, a bank or a H lender lending out money on payment of interest. In this case, there is no relationship of debtor and creditor. Accordingly, the claim for

interest cannot be legally founded either on common law or equity. [262-G, 265-A]

Halsbury's Vol. 32 para 108: (Discussing cases where interest is payable under common law) para 109 (Discussing cases where there is equitable rights to interest), *held inapplicable.*

Bengal Nagpur Railway v. *Ruttanji Ramji,* A.I.R. 1939 P.C. 67, referred to.

3.5 The object of the deposit is to secure the payment of consumption charges. These charges may vary depending upon the daily consumption, depending on the level of supply. The amount due by way of consumption charges would also be liable to be appropriated. Therefore, it is incorrect to state that the Board is a trustee. The relationship between the Board and consumer is not that of a trustee and a beneficiary but a depositor and depositee. This is not even a case of a constructive trust under Section 90 of the Indian Trust Act, since no advantage is gained by the Electricity Board in derogation of the rights of the consumer. [262 D-F]

4. The clause not providing for interest on security deposit is neither arbitrary nor palpably unreasonable, nor even unconscionable for the following reasons:

(a) The consumer made the security depost in consideration of the performance of his obligation for obtaining the service which is essential to him.

(b) The electricity supply is made to the consumers on credit.

(c) The billing time taken by the Board is to the advantage of the consumer.

(d) Public revenues are blocked in generation, transmission and distribution of electricity for the purpose of supply. The Board pays interest on the loans borrowed by the Board. This is in order to perform

A public service. On those payments made by the Board it gets no interest from the consumers.

(e) The Board needs back its blocked money to carry out public service with reasonable recompense.

B

(f) The Board is not essentially a commericial organisation to which the consumer has furnished the security to earn interest thereon. [269 F-H, 270 A-C]

C 4.1 The argument that the Board is monopolistic in character and therefore, the consumers have no other option but to enter contract appears to be misconceived. The consumption security deposit whether or not it carries interest is a condition precedent for the supply of electric energy. The scrutiny by the Court in determining the unconD stitutionality of a provision not providing for interest must be tested on the touchstone whether in imposing such a condition the Board has acted as a private trader and thereby shed off its public utility character? In imposing such a condition the Board has not acted as a private trader. The nature of deposit has a rational relationship to the object which is incorporated a condition of supply. [266 A-D,]

E

Jagdamba Paper Industries (Pvt.) Ltd. v. *Haryana State Electricity Board,* [1983] 4 S.C.C. 508, referred to.

4.2 Assuming that the contract is an adhesion contract, still it is F not unconscionable. Conditions and the terms of supply providing for non-payment of interest is not so unconscionable as to shock the conscience of the Court. [266-H]

Central Inland Water Transport Corporation v. *Brojo Nath Ganguly,* G [1986] 3 S.C.C. 156; *Bihar State Electricity Board* v. *Green Rubber Industries,* [1990] 1 S.C.C. 731, referred to.

Farmsworth on Contracts, 2nd Edn. 319. 320, para 4. 27, referred to.

H *Gillespie Brothers Ltd.* v. *Roy Bowles Ltd.* (1973) 1 A.E.R. 193;

G.B Mahajan and Ors. v. *Jalgaon Municipal Council and* Ors. [1991] 3 S.C.C. 91 cited. A

4.3 In *Jagdamba Papers* the question of interest on security was not raised before the Court. Therefore, the Court had no occasion to decide this issue of interest. That part of the judgment is sub-silentio. [271-E, 272 A-C] B

Jagdamba Paper Industries (Pvt.) Ltd. v. Hayana State Electricity Board, [1983] 4 S.C.C 508, explained and held inapplicable.

4.4 This Court never intended to adjudicate upon the rate of interest or render a decision on that question. Therefore, it cannot be contendedd that the disposal of the Writ Petition though by a Bench of 3-Judges would be binding on a Bench of two Judges because it was entirely based on interlocutory order. Therefore, this Court is free to decide the question on its merits. [273 F-6] C D

4.5 The Division Bench of the Rajasthan High Court erred in striking down condition No. 20 of the General Conditions of the Rajasthan Electricity Board as violative of Article 14 of the Constitution of India. [271-D] E

4.6 The rate of interest on security deposit cannot be equated with the rate of interest on the fixed deposit. Firstly, if the consumption charges are to be appropriated the moneys accrued by way of deposits cannot be held in fixed deposits. Nor all deposits need carry interest in every transaction. Secondly, the nature and character of the security deposit is essentially different from fixed deposit. [270 D-E] F

5. It may be that the consumers of electricity, where it is raw material, would be prompt in their payment in their own interest. On that basis, it cannot be contended that they cannot be treated in the same way as defaulters. The test, in Court's considered opinion, is whether in the general application of law there is any discrimination. Merely because some of the consumers are prompt those isolated cases cannot render the provision unconstitutional. [273 H, 274-A] G H

A *The Collector of Customs, Madras* v. *Nathella Sampathy Chetty*, **[1962] 3 S.C.R. 786; *Vivian Joseph* v. *Municipal Corporation, Bombay*, [1972] 2 S.C.R. 257, *Fatehchand Himmatlal* v. *State of Maharashtra*, [1977] 2 S.C.R. 828** and; ***B. Banerjee*** v. ***Anita Pam*, [1975] 2 S.C.R. 774, referred to.**

B **6. No reason need be given for enhancement of additional security deposit. It stands to reason that if there is a revision in the rate of tariff there must be an upward revision in the consumption security deposit since it has direct bearing to the level of supply in consumption of electricity. This being a condition of supply, no reason need be given**
C **at the time of upward revision. [278-C, 277 A-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2117 to 2122 of 1993 etc. etc.

D From the Judgment and Order dated 28.4.1989 of the Andhra Pradesh High Court in W.P. Nos. 11162/84, 18968/87, 12007/84, 15131/87, 5050/82 and 15746/87.

Altaf Ahmed, V.R. Reddy, Addl. Solicitor Genral, Narasimha murthy, K. Parasaran, Anil B. Divan, Harish N. Salve, Soli j. Sorabjee,
E G. Ramaswamy, P.P. Rao, Gobind Mukhoty, Dr. Shanker Ghosh, Shanti Bhushan, G.L. Sanghi, Pawan Kumar, P.S. Poti, B.M. Patnaik, Sanjay Parikh, P. Niriop, Kailash Vasdev, S. Khaitan, K.K. Khaitan, Darshan Singh, Sushil Kumar Jain. A.P. Dhamija, S. Atreya, E.C. Agarwal, A.V. Palli. Atul Sharma, Ms Reena Aggarwal, A.K. Mehta,
F R.K. Gupta , P.C Kapur, T.V.S.N Chari, B. Reddy, Ms. Pramila, Anil K. Sangal, Ajay K. Tayal. Koka Raghava. B. Kanta Rao, Shiv Prakash Pandey, Ms Rekha Pandey , R.K. Priyokumar Singh, T.V. Rathnam, K.R. Chowdhary, K. Ram Kumar, Ashok Kr. Gupta, R.B. Misra , Pradeep Misra, Mrs. Sheil Mohini Seth, Jain Hansaria & Co. R.P. Gupta, Ms. Sarla Chandra, M/s Mitter Mitter & Co. Ms Abha Jain,
G Ranjit Kumar, M.P. Jha, S.K. Jain, Vinoo Bhagat, Surya Kant, Aruneshwar Gupta, Badridas Sharma, Prabhu Dayal, Sudarshan Lal Aneja, R. Venkataramani, Y.P. Rao, D.K Garg, K.C. Agarwals, O.P Khaitan, P.B. Agarwala, Mohinder Rupal, Mrs. Kamakshi Mehllwal, Ms Archna Kaul (For Gagrat & Co.), Vijay Hansaria, R. S. Sodhi ,
H D.A. Dave, Raian Karanjwala, Mrs. Manik Karanjawala, Rajesh Kumar, Ms. Suruchi Aggarwal, K.J. John, Ms. Deepa Dixit (For

Swarup John & Co.), A. T. Patra, S.R. Agarwal, Ms. Bina Gupta, Prashant Bhushan, K. Rajendra Choudhary, Rakesh K. Sharma, Shivi Sharma, Anil K. Chopra, Pallav Sisodia, Ravinder Narain (For JBD & Co.) Praveen Kumar, Virender Kaushal, Bimal Rao Jad, Ms Malini Poduval, K.K. Lahri and S. Sukumaran for the appearing parties. A

The judgment of the Court was delivered by B

MOHAN,J. Leave granted.

These civil appeals are directed against the judgment of the Division Bench of Andhra Pradesh High Court reported in *Southern Steel Ltd.* v. *A.P. State Electricty Board, Hydrabad* AIR 1990 Andhra Pradesh 58. The facts briefly are as under: C

The Andhra Pradesh State Electricity Board is constituted under Section 5 of the Electicity Supply Act, 1948 (hereinafter referred to as the Act). The said board is engaged in generation, distribution and supply of electricity in the State of Andhra Pradesh. Electric energy is supplied for industrial, commercial, agricultural and domestic purposes. To such of these industries, using energy about a particular level, it is supplied at a higher voltage. They are classified as high tension consumers (H.T. consumers). All the appellants herein belong to that category. D E

Section 49 of the Act empowers the Board to notify the terms and conditions upon which it will supply electricity to a person. It is also empowered to frame uniform tariffs in that behalf. Sub-section 2 specifies in fixing the uniform tariff, the Board shall have regard to all or any or the following factors, namely- F

a) the nature of the supply and the purposes for which it is required; G

b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time H

A being served or adequately served by the licensee;

c) the simplification and standardisation of methods and rates of charges for such supplies;

B d) the extension and cheapening of supplies of electricity to sparsely developed areas.

Sub-section 3 empowers the Board to enter into a special agreement with any consumer any prescribe different tariffs for him. Under Section 4, an obligation is cast on the Board not to show undue C preference to any person while fixing the tarrif and terms and conditions for the supply of electricity. In all these cases, the appellants are covered by the general terms and conditiions notified under Section 49 (1) of the Act. The terms and conditions were notified by the Board and the B.P.M.S. No. 690 dated 17th of September, 1975. It is not D necessary to refer in detail to the various terms and conditions. However, what requires to be noticed is the terms and conditions oblige every consumer excuting an agreement in the prescribed form, undertaking to abide by the terms and conditions prevailing on the date of agreement and also agreed to be bound by the terms and conditions as may be notified from time to time. It is important to note under E Section 25, the Board has unilateral right to vary the term from time to time under clause 25.1. The terms and conditions for supply of electricity by special or general proceedings.

Condition 32.1. provides "the Board shall as far as possible within F 15 days after the expiration of each calendar month cause to be delivered to every consumer a bill of charges stating the amounts payable by the consumer towards charges for energy supplied and any other sum in connection with supply of energy by the Board."

G Conditions 32.2.1. obliges the consumers to pay the amount shown in the bill, within 15 days of the date of the bill in default whereof they are liable to pay "an additional charge of 2% per month or part thereof for the period of delay" in paying the bill. Condition 32.3 empowers the Board to disconnect the supply in case of default in paying the bill, without prejudice to its right to recover the amount due. H Condition 24.3 also lays down that the consumer shall pay to the Board

every month the charges for electrical energy supplied to him during the preceding month at the tariff in force from time to time. Condition 28 obliges the consumers to deposit an amount equivalent to three months consumption charges with the Board. It would be appropriate to set out condition No. 28 as far as it is necessary for our purposes, omitting what is not relevant as under:

> 28. Consumption deposits:- 28.1 Initial consumption deposit. 28.1.1. The consumer shall deposit with the Board a sum in cash equivalent to estimated three month's consumption charges. The consumer coming under the L.T. category 'domestic' shall however pay at Rs. 30.00 per Kilowatt or part thereof connected load.
>
> * "Provided that the Board may, in the case of industrial consumers, accept by way of consumption deposit a sum equivalent to two months consumption charges during a period of three years from the date of first release of supply of electricty".
>
> 28.1.2 In the event of the consumer failing to pay to the Board any sum that may become due for payment to the Board on the dates fixed for payment thereof, the Board may, in addition to and without prejudice to the other rights of the Board, appropriate a part or whole of such deposit towards the sum due from the consumer.
>
> 28.2 Additional Consumption Deposit-All consumers other than those L.T. Domestic consumers whose monthly bills are less than Rs. 500 for a continuous period of six months, shall keep with the Board an amount equivalent to charges for three months demand and enargy charges as consumption deposit. The aduacy of the consumption deposit shall be reviewed by the Board usually once in every year and/ or at any time during the year if so warranted dur to upward revision of tariffs, enhancement of the con-

tracted demand by the consumer charges in the pattern of consumption by the consumer relaxation of power restrictions or such other factors which in the opinion of the Board, warrant review of the adequacy of the existing consumption deposit. The review shall take into account the following factors:-

(i) In the case of consumers where there is no change in the contracted demand, the average consumption for the preceeding twelve months after taking into consideration the quantum and nature of restrictions imposed, if any, during that period shall be the basis.

(ii) In the case of consumers who were sanctioned additional demand and availed it during a part of the period, average recorded consumption for the period of review shall be from the date of utilisation of increased demand to the date of review after taking into consideration the nature and quantum of restrictions imposed, if any during that preriod.

(iii) The demand shall be contracted demand of the consumer at the time of review.

(iv) The rates, at which the demand or energy charges shall be calculated,will be tariff rates prevailing as on the date of review.

Based on such review, if the consumption deposit of the consumer is found inadequate or has fallen short on account of adjustments made as indicated in Clause 28.1.2 hereof, the consumer shall deposit within 30 days of receipt of notice in this regard such additional amount as may be required by the Board or replenish the required amount as the case may be.

28.3 Interest on consumption deposit:- Interest shall be paid by the Board on deposits of more than Rs. 60 made in cash at the rate of 3% pet annum or such other

rate as may be fixed by the Board from time to time. Full calender months only shall be taken into account for the purpose of calculating interest and interest shall be calculated to nearest five paisa. The intrest accruing to the credit of the consumer shall be adjusted every year in the month of April in the Electricity Supply bills.

28.4 Disconnection or non-payment of consumption deposit:- If the consumer does not make payment of amount of consumption depsoit or additional consumption deposit or where the deposit is given in Government security or National Saving Certificate Bank guarantee etc., he fails to replace them by deposit in cash when so demanded by Board within the notice pariod of 30 days supply of consumer shall be liable for disconnection.

28.5 "The Consumption Deposit so calculated as per the Clause 28.1 and /or 28.2 above shall not be less than three times the monthly minimum charges, applicable to the consumer under the category to which he belongs".

28.6 "All consumers shall pay the Consumption Deposit or additional consumer deposit within thirty days from the date the demand notice if there be any delay in payment, the consumer shall pay surcharge thereon equal to 1 1/2% per month or such other percentage to be fixed by the Board from time to time, of the demanded amount for each month of delay or part thereof. This will be without prejudice to the Board's right to disconnected supply of electricity".

Clause (1) of condition 28 is general in nature. It applies to all consumers. Cl. (1.2) enables the Board to appropriate a part or whole of the said deposit towards any amount due to the Board and not paid within the prescribed period. Cl. (2) applies to all consumers, except those L.T. Domestic consumers whose monthly bills are less than Rs.

A 500 per month for a continuous period of six months. Such consumers are obliged to keep with the Board an amount equivalent to three months' demand and energy charges, as consumption deposit. The deposit is liable to be reviewed by the Board from time to time, having regard to the factors mentioned in the said clause. Cl. (3) prescribes interest which the Board has to pay on such deposit. It is 3% per annum.
B Clause (4) empowers the Board to disconnect the supply if consumption deposit/ additional consumption deposit is not made, or is not replaced whenever called upon to do so. Clause (5) prescribes a certain `floor' below which consumption deposit shall not go. Clause (6) says that the consumption deposit or additional deposit shall be paid within
C thirty days of the notice demanding such deposit. In default, not only interest is payable but the supply also is liable to be disconnected.

The attack before the High Court was that according to Condition No. 32.1, the bill is served within 15 days of the expiration of each
D calendar month. The amount covered by the bill is payable within 15 days of the date of the bill. The period of 15 days for payment is calculated not from the date of service of the bill but from the date of the bill. A bill could be served even on the very first day of the succeding month in which event it will become payable within 15 day of the date of the bill. In such a situation, it is not correct to say that a
E consumer goes on availing and enjoying energy for a period of three months without paying for it. Invariably it does not exceed six weeks or at any rate, two months. In the event of non-payment under Condition No. 32.3, supply of energy can be disconnected without seven days notice as contemplated under Section 24 of the Indian
F Electricity Act, 1910. Therefore:

(1) It was urged that the consumption deposit should in no event exceed two months everage consumption charges.

(2) The second attack was the payment of 3% interest by the
G Board on such consumption deposit is no longer good law in view of the judgment of Supreme Court rendered in *M/s Jagdamba Paper Industries (p) Ltd. v. H.S.E. Board,* [1983] 4 SCC 508, since this Court had taken the view that the interest on such deposit should be paid at the same rate as is paid by the schedule bank on fixed deposit.

H

It was generally urged that the Electricity Board being a State within the meaning of Article 12, it has to act fairly. Any term or condition will have to answer the test of reasonableness. On the contrary, if it is arbitrary, it would be violative of Article 14. A

The High Court after analysing the object behind Condition No. 28 relating to the consumption deposit held: The condition requiring the consumer to pay the charges within 15 days from the date of the bill and on such failure, a right is conferred on the Board to disconnect the supply. The condition merely refer to the power of the Board. Existence of power is distinct from exercise of power. The Board cannot blindly act upon Condition 32.3 and disconnect the supply the moment 15 days time (from the date of the bill) expires. It has to take a realistic view of the situation. After all, these industries are engaged in production of goods essential to the community. A blind and mechanical adherence to Condition 32.3 (instant disconnection) may indeed prove counter-productive in larger sense. It was also not possible for the Board to notice the non payment immediately in view of the large number of consumers and the extensive nature of organisation. Besides, huge sums are required by the Electricity Board as rotating capital. It borrows large amounts from organisations like L.I.C. and Banks, on which it pays interest to them. Hence, it is well entitled to require the consumer to co-operate by paying their bills regularly, by furnishing security deposits and by conforming to the terms and conditions of supply. Under these circumstances, the requirement of three months deposit could not be said to be unreasonable and unjustified. B C D E F

As regards, the payment of 3% interest, the High Court was of the view that the decision of this Court in *Jagdamba Paper Industries (P) Ltd.* (supra) could not be read as a decision of the Supreme Court on the basis of which it could be declared that the earlier Bench decisions of the High Court were no longer binding. Accordingly, it dismissed the writ petitions. G

Aggrieved by this decision, the present S.L.Ps. have come to be preferred.

Mr. R.N. Narasimhanmurthy, learned counsel for the appellant H

A after drawing our attention to clauses 28 and 32 would submit that if there is any laxity on the part of the Board in preparing the bill that cannot be a ground to make a consumer to pay three months deposit.

The tariffs of 1974 provided for the payment of bills within 14 days from the date of the bill while the quantum of deposit is three B months consumption charges. Originally, the time for payment was 30 days from the date of the bill. That has been reduced to 15 days which is a drastic change. The security deposit is a provision for continued default of the consumer. The quantum of such a deposit is reckoned on the basis of the lapse of time between the consumption charges that C become due after expiry of time required for reading of meter, billing, delivery of the bill to the consumer; grace time allowed and the reasonable time required for disconnecting the consumer's service connection. The reduction to 15 days has great relevance on the quantum of deposit as the deposit is intended to cover the defaulted amount by the time of disconnection. However, considering that the D bills of power intensive industries are preapared within 3 days of meter reading and also considering the close monitoring that is feasible in verification of payments of bills of these consumers and the small number of these consumers destributed among the several Circle Offices of the Board, any default is detectable within 20 days of the bill E for appropriate action to be taken immediately. The purpose of consumption deposit is only to safeguard the actual consumption charges that become payable by the time penal action could be intiated. Even the judgment of the High Court indicates that a time lapse of 37 days from the date of the meter reading without considering the 7 days F notice prescribed under Section 24 of the Indian Electricity Act. The balance time of 23 days to make up for 90 days is provided for the laxity in the Board administrative system which justificably cannot be passed on to the consumer by way of consumption deposit.

In view of the high stakes involved in the case of power intensive G consumers, the Board should evolve a suitable system of payments and must keep the security deposit to the minimum instead of three months.

It is further submitted that the security deposit could be in the form of bank guarantee. There is no justification to require cash deposit. As H a matter of fact, as noted in *M/s Haryana Ice Factory* v. *Municipal*

Corporation of Delhi and Another AIR 1986 Delhi 78, the security in the form of Government Bond is permissible. A

In *Jagdamba Paper Industries Case* (supra), paragraph 11 of the judgment deals with rate of interest. That is a case where 8% was increased to 10% by consent. If really, it is in the nature of a deposit, there is no Justification as to why bank rate should not be awarded. It it seen from *The Chairman Karnataka Electricity Board and Others* v. *Gadag Mining Co. & Ors. etc.* AIR 1986 Karnataka 252, 10% interest had been awarded. B

Mr. Anil B. Divan, learned counsel for the appllant in S.L.P. (c) No. 2564/92 would submit as under: C

Power intensive units like the appellant's form a distinct class of consumers. The Ferro Silicon plant of petitioner No. 1 is a power ntensive one where the cost of electricity constitutes about 55% of the price of the ferro silicon produced. Electricity, thus is the basic raw material for this industry. On an average, the appellant is consuming electricity worth Rs. 1.6 crores per month. If there was full supply of electricity (without there being a power cut), the monthly bill would be approximately Rs. 4 crores at a present tariff. D

E

The power intensive plant of the appellant maintains a very high load factor of 0.9%. Ordinary H.T. consumers work at a load factor of only 60% and the units consumed at only 50 per KVA demand. The HT-III tariff for power intensive consumers requires a minimum consumption of 403.3 units per KVA demand. This means more than 8 times that of H.T. consumers. The Electricity Board has always classified power intensive units as a separate category. At present, there is a special tariff called HT-III tariff with a list of power intensive industries specified in the tariff notification. F

G

The appellant No. 1 had deposited Rs. 1.07 crores in cash towards the security deposit. A bank guarantee for Rs. 53.64 lacs had also been furnished. A further demand of Rs. 96.5 lacs prompted the filing of the writ petition in the High Court. As per the orders of this Court in S.L.P. No. 12077/84 it was directed on 6.2.1987 that a sum of Rs. 1 crore be paid by the 3rd of every month and the balance within 7 days of the H

A presentation of the bill. This order came to be modified that Rs. 1 crore was to be paid on the 30th of the month and the balance within one week of the receipt of the bill. The said arrangement has been working satisfactorily. There has not been any default in payment of electricity bills. Therefore,the entire dispute is a theoretical one as to what the quantum of the security deposit can, or ought to be. A deposit in cash
B of an amount equal to three months average bills at full supply at the present tariff without any power cut will amount to Rs. 12 cores on the basis of tariff revised in October 1992. With ever increasing tariffs, the deposit demanded will also keep increasing. Under these circumstances, the condition requiring three months security deposit is
C arbitrary and illegal for power intensive consumers. The paid up share capital of apellant No. 1 is Rs. 3.8 crores. The gross value of the plant and machinery of the power intensive unit is Rs. 7.94 crores. The total advances made by the consortium of bankers for working capital is Rs. 4.25 crores. The total net worth of all the dilisions of appellant No. 1 that is Merine products, Sugar & Engineering, Machine Building and
D the power intensive Ferro Silicon Plant is Rs. 14.6 crores. The security already furnished namely Rs. 5.7 crores is crippling the Ferro Silicon Plant division. A demand of three months cash deposit would be in the range of Rs. 12 crores. It is arbitrary and unjustifiable to require appellant No. 1 to deposit several times its share capital by way of
E security. If this demand is enforced strictly, the plant of the appellant will become sick and ultimately, will have to be wound up. In other States, the provision is not so harsh.

If the security deposit is 'consumption deposit' and it is for
F meeting the cost of supply in advance, then the Electricity Board cannot charge penal interest at 2% per month for non-payment of bills within the stipulated period. The deposit, first must be appropriated against the dues and the interest charged only if there is balance due. The Stand of the Electricity Board is perverse and illegal. Equally, there can be no question of 'supply on credit' if deposit is adjusted
G against consumption all the time.

The consumer has got a right to negotiate. In *The Indian Aluminium Co.* v. *Karnataka Electricity Board* [1992] 3 SCC 580, this Court directed the Electricity Board to adopt a realistic policy. Here also
H Condition No. 28 must be altered.

There is no power under the Electricity Supply Act to enable the Board to raise revenue or to cover its capital cost etc. except by way of adjusting tariffs as seen from under Section 59 of the Supply Act, 1948. Therefore, consumption deposit cannot be used for the purpose of revenue or raising revenue. In this case, the Electricity Board had not placed any material to give interest only at 3%.

Mr. K. Parasaran, learned counsel appearing in S.L.P. No. 13004/89 after referring to the passage occurring at page 66 of *Haryana Ice Factory* case (supra) submits that the security deposit cannot go to build up the capital or fixation or tariff. Under Sections 49 and 59 of the Supply Act, finance is required to be adjusted including the payment of interest. Demand of three months consumption deposit cannot be resorted to. In support of his submission, reliance is placed on *Hindustan Zinc Ltd. etc. etc.* v. *Andhra Pradesh State Electricity Board & Ors.* [1991] 3 SCC 299.

Mr. Kailash Vasudev. learned counsel for appellant in S.L.P. 13004/89 submits that under Section 49 of the Supply Act, it is enjoined upon the Board to adjust its tariffs by keeping the factors detailed in the said Supply Act. Therefore, the Board cannot have recourse methods not provided under the said Act. The demand for a deposit to ensure the due payment of the bills for electrical energy consumed amounts to framing an additional tariff. The Board cannot do indirectly what it cannot do directly.

The Board being 'a state monopoly' has to act reasonably and not arbitrarily. The terms and conditions of supply cannot be unfair and oppressive.

Mr. R. Venkataramani, learned counsel in his written submissions in Writ Petition Nos. 1293/89 & 1353/89 and S.L.P. (c) Nos. 4791-92/90 & 4793-94/90 would urge that Section 49 of the Supply Act is unconstitutional since there are no guidelines for framing the terms and conditions of supply of electricity. The said Section does not specifically spell out fairness of action. Clause 28 of the terms and conditions of supply is a clear illustration of arbitrariness and subordinate legislation.

A The words 'as the Board thinks fit' ought to be interpreted so as to be consistent with the fairness of State action. They are to be construed as "reasonably thinks fit" as held in *Roberts* v. *Hopwood*, 1925 AC 578 and *Pyx Granite* v. *Minister of Housing and Local Government*, (1958) 1 All ER 625.

B Clause 28 of the terms and conditions of supply relation to fixation of 3% interest and additional charges are vitiated due to non-application of mind. Under clause 28.6 of the terms and conditions, in the event of dalay in payment of consumption deposit or additional consumpion deposit within the stipulated period, the consumer is C obliged to pay surcharge at 18%. The obligation to pay surcharge and the power of the Board to vary the percentage from time to time would constitute draconian provision.

Money, wherever it is held in deposit could only be used to earn D some interest. Therefore, paying 3% interest on the consumer deposit is not at all justified. A public institution cannot be allowed to get excessive interest.

In meeting these arguments, the learned Additional Solicitor General submits that under Electricity Supply Act, the finances of the E Board are controlled to the minutest detail.

Originally, prior to 1978, Section 59 required the Board as far as practiable and after taking credit for any subvention from the State Government not to carry on its operation on loss. For this purpose, it F was empowered to adjust its charges accordingly from time to time. Section 59 was amended by Act 23 of 1978. After the amendment, the Board after taking credit for any subvention from the State Government was required to carry on its operations and to adjust its tariffs so as to ensure that the total revenues in any year after meeting of the expenses left such surplus as state government may specify from time G to time. This Court has taken the view in *Kerala State Electricity Board v. S.N. Govinda Prabhu & Bros. & Ors* [1986] 4 SCC 198 that even if the Government had not prescribed surplus, the Electricity Board could generate surplus.

H After the amendment by Act 16 of 1983 which came into force on

1.4.1985, the Board was to create a minimum surplus of 3% or such higher percentage as the State Government would specify in this behalf. It is in this background., the matter will have to adjuged.

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 effect 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. Etc.* Etc. v. *Andhra Pradesh State Electriciy Board & Others* [1991] 3 SCC 299. It cannot be contended that the three months consumptions deposit is arbitrary. This argument ignores the following important factors:

i) This is not a security deposit but a consumption deposit.

ii) It 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)

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 saparately. 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.

As regards payment of interest at 3%, elecricity supply is made on

A credit basis. Therefore, it is a matter of adjustment of Board finances. Strictly speaking, the consumer deposit is in the nature of fidelity guarantee to ensure proper payment by consumer. The consumer may not be entitled to interest at all. However, where the Board has so adjusted finances and pay 3% interest, the Board cannot be defaulted.

B *Jagdamba Paper Induntries* case (supra) cannot be said to be a decision as to the rate of interest payable by the Electricity Board. Upon reading paragraph 11 of the judgment, it will be clear that it proceeded on the concent of the counsel.

C *RAJASTHAN*

The writ petitioners applied to appellant Board for the supply of high tention power for their factories. After the execution of the necessary agreement and furnishing of security deposit, power connections were given. Subsequently, the Board issued notice requiring D the consumers to deposit the enhanced amount of cash security as well as the bank guarantee on the basis of maximum power consumption of three months.

With regard to security deposit, Part II of the General Conditions E of Supply and Scale of Miscellaneous Charges in Note-II stated that no intrest will be paid by the Board on the security deposit. Two contentions were raised in the petitions, (i) Note II providing for no interest was bad in law, (ii) the enhanced security must be calculated not on three months maximum consumption but on the basis of minimum power consumption. These two contentions found favour F with the learned Single Judge. The Rajasthan Electricity Board filed special appeals while the consumers filed cross appeals. The Division Bench held as under:

i) The Board has power to demand additional security but the G average consumption of three months should be taken as the basis for calculating the amount of such security.

ii) The clause relating to non-payment of interest was not reasonable. Interest must be allowed on the entire amount of cash security from the date of the writ petition. The appeals by the Board were H dismissed while cross-appeals by the consumers were allowed. Ag-

grieved by this judgment, the present S.L.Ps. have come to be preferred by the Rajsthan Electricity Supply Board. A

Mr. Soli J. Sorabjee, learned counsel appearing for the appellant argued as follows:

B

There is no legal obligation to pay interest on a deposit made by the consumer with the Board in terms of Clause 20 (a) & (c) of the General Conditions of Supply. Nor even interest is payable under common law or in equity. In this connection, the learned counsel draws our attention to Halsbury's 4th Edition, volume 32 pages 54-55. There is no legal or equitable obligation to pay interest for detention of C monies. In support of this argument, learned counsel relies on *Bengal Nagpur Railway company Ltd.* v. *Ruttanji Ramji,* (1937) L.R. 65 I.A. 66 and *Union of India* v. *A.L. Rallia Ram* [1964] 3 SCR 164, pages 187, 189-190.

D

There is no contract or agreement which provides for payment of interest. On the contrary, Clause 9 (b) (ii) of the General Conditions expressly provides that no interest will be paid by the Board on security deposit. There is no statutory provision which casts an obligation on the Board to pay interest on the security deposit. The High Court erred in relying on the model form of draft conditions of supply because the E said model form is applicable to only licensee as defined under Section 2 (h) of Electricity Act. It is not applicable to a Board which is not a licencee. Further, it is not necessary on the part of the Board to adopt model form. Schedule VI of 1948 Act again cannot be pressed into service as the Board is not a licencee clause 2 (b) (v) of Schedule VI F merely specifies interest on security deposit as properly incurred item of expenditure for the purpose of determining the 'clear profit' of the licencee. The said clause does not and cannot by itself impose an obligation on the licencee to pay interest on security deposit. Should interest be paid, then it quilifies as an item of expenditure properly incurred. G

The High Court also erred in relying on Section 4 (2) of the Interest Act, 1978. Section 4 (2) has no application where on account of contractual term or a statutory provision, payment of interest is not permitted. Section 4 (2) of the Interest Act, 1978 merely enlarges the H

A categories of cases mentioned under Section 4 (1). The said Section cannot override other statutory provisions or a contract between the parties. The *non-obstante* clause under Section 4 (2) is restricted only to the provisions of Interest Act, 1948. It is submitted that under the billing practice prevalent with the Rajasthan Electricity Board the consumer has free use of electricity during the period between
B consumption of electricity and expiry of period after notice. During this period which varies from 2 to 2 1/2 months, the consumer in effect enjoys a credit facility. Therefore, if security depoit is demanded for three months, it is neither unreasonable nor arbitrary. As a matter of fact, the security demanded by the appellant Board is in the form of
C cash for one month and bank or insurance guarantee for two months. Therefore, it is all the more reasonable. In support of this, reliance is placed on *Kistna Cement Works Tadepalli* v. *The Secretary APSEB, Vidyut Soudha* AIR 1979 A.P. 291, *B.R. Oil Mills, Bharatpur* v. *Assistant Engineer (D) R.S.E.B., Bharatpur,* AIR 1981 Rajasthan 108,
D *Municipal Corporation for Greater Bombay* v. M/s *Devidayal Metal Industries*, AIR 1984 Bombay 242, *Haryana Ice Factory* v. *Municipal Corporation of Delhi*, AIR 1986 Delhi 78 and *Southern Steel Ltd.* v. *The A.P. State Electricity Board, Hyderabad*, AIR 1990 A.P. 58.

On the question of the constitutionality of the provisions regard-
E ing non-payment of interest and whether it is violative of Article 14, it is submitted:

i) Article 14 does not mandate mathematical exactitude or scientific precision;

F

ii) The mode and period of security should be related to the billing practice prevailing in Rajasthan Electricity Board.

iii) The consumer with open eyes has entered into the agreement
G and has solemnly undertaken to abide by the condition regarding non-payment of interest. He cannot resile from that condition. There is nothing inherently objectionable, nor is the condition illegal or void as opposed to public policy. Even assuming, the contract between the consumer and the Board is an adhesion contract it is not necessarily unconscionable. In this connection, reference is invited to Black's *Law*
H *Dictionary*, 6th Edition, page 40. That passege has been cited with

approval in *Central Inland Water Transport Corpn.* v. *Brojo Nath Ganguly* [1986] 3 SCC 156. In such matters, relief is given to the party only if the contract is so unreasonable as to be unconscionable. In this connection reliance is placed on *Gillespie Brothers Ltd.* v. *Roy Bowles Ltd.* [1973] 1 A.E.R. 193 at 200 (g), *Farmsworth on Contracts*, 2nd Edition, 319 & 320 para 4.27. The rate of interest on security deposit cannot be equated with the rate of interest payable on fixed deposit because the nature and character of a security deposit is basically different from fixed deposit. This is clearly brought out by the Companies (Acceptance of Deposits) Rules, 1975. The said Rules expressly exempt security deposit in definition of Rule 2, clause (v) & (vi), In *Jagdamba paper Industries* case (supra), the rate of interest was based on a concession by the parties. The Court had no occasion to decide the rate of interest. That part of the judgment proceeds *sub silentio*.

The argument based on surcharge levied for delayed payment is a non sequitur. If the provision for non-payment of interest is valid and not arbitrary, it does not become arbitrary and unconstitutional because surcharge is levied at 2% per month. In fact, surcharge has not been challenged. Surcharge is attracted only if the bill is not paid within the due date. The submissions based on Sections 57 & 59 of the Supply Act in relation to security deposit proceed on a misconception of the nature and character of payment as a security deposit. The object of security deposit is to secure prompt payment of electricity bills. They are not intended to finance the Board's transaction. Section 57 read with sixth Schedule is meant to ensure a reasonable return. The expression 'charges' in the Sixth Schedule clearly shows that security deposits are not included within the expression 'charges'. There is no mutual exclulsivity between increase of tariffs and earning interest on security deposits.

It is also incorrect to contend that prompt payees of electricity bills are treated on par with the defaulters and thus anequals are treated alike. The real test is, whether in the general application of law there is any discrimination. In support of this submission, the learned counsel placed his reliance on:

The Collector of Customs, Madras v. *Nathella Sampathu Chetty*

A [1962] 3 SCR 786, *Vivian Joseph Ferreira* v. *Municipal Corporation of Greater Bombay* [1992] 2 *SCR 257, B. Banerjee* v. *Anita Pan* [1975] 2 774 and *Fatehchand Himmatlal* v. *State of Meharasthra* [1977] 2 SCR 828.

B The last submission of the learned counsel is that a staturory provision may be struck down as unconstitutional only if it is palpably arbitrary and irrationality is writ large. Merely because the Court considers a particular provision to be unwise or undesirable, it is never struck down. The learned counsel fairly concedes that the enhanced security deposit could be calculated only on the average consumption C of three months of the previous years.

Mr. Altaf Ahmad, learned counsel supporting the argumunts of Mr. Soli J. Sorabjee would urge:

D In this case, the consumers are those who use H.T. and E. H. T. lines. Section 49 (3) gives the clue that each Board can have its own scheme. Section 79 of the Supply Act speeks of the power to make regulation. Clauses (i) and (j) are relevant because they talk of principles governing the making of arrangements with licensees under Section 47 and other then licensees under Section 49.

E

The industrial consumers constitute the majority user of the electricity amounting to 49.51 per cent. The transmission losses for 1992-93 alone are 22 per cent. Besides, the Board is also purchasing power from other corporations and States. Therefore, the demand for F security deposit is fully justified and there is nothing arbitrary in not providing for interest. That is what is provided under clause 21 (a) of the agreement in relation to high tension supply. The consumption deposit cannot be equated to the deposit in a bank and interest could be demanded as of right.

G

Mr. Kapil Sibal, learned counsel appearing for the Haryana Board which Board has now withdrawn payment of interest, has filed intervention application since the present day position of the Haryana Board is on a par with Rajasthan.

H Mr. R.K. Mehta, learned counsel for the intervenor on behalf of

the Orissa Electricity Board through his written submissions urges that it may be that the regulations in the case of Andhra Pradesh, Utter Pradesh and Bihar Provide for payment of interest at a certain rate on the security deposit. However, the Rajsthan and Orissa regulations provide that no interest shall be payable on the securities furnished by the Board. In the impugned judgment the Division Bench has not given any cogent or valid reason for striking down Condition no. 20 of the General Conditions of the Rajasthan Electricity Board. The High Court had failed to appreciate the following factors while quashing the impugned clause of the regulations. Electricity is an item which cannot be sold and supplied immediately after generation. For the sale of electricity one has to take meter reading meant for the said purpose and, therefore, the Board sends the bill for particular duration. It is obvious that the reading of the meter could not be taken at every point of time but only for duration/period. In the process 2-1/2 months elapse. The Board does not charge any intrest at least for 2-1/2 month from its consumers. At the same time, the Board needs finance for production, supply and other charges necessary for supply of electricity. The Board is thus obliged to take loans from various financial institutions. The consumers who are utilising electricity for 2-1/2 months without making any payment will be unjustifiably enriched at the cost of gereral public in the absence of security deposit. Further taking of advance money without interest for Providing other services in the market is a general practice. Therefore, a similar provision in the general conditions for supply of the Board cannot be treated as arbitrary or unreasonable.

A consumer is not entitled to claim interest on his security deposit having regard to the following considerations.

1. The security deposit is furnished in consideration of the performance of the consumer's obligation for obtaining the service essential to the life and the well-being of community.

2. The electricity supply is made to that consumer on credit without requiring him to make instant payment.

3. The billing time taken by the Board is for the benefit and convenience of the consumer as he saves additional expenditure on

account of instant or shorter billing time, possibly through electronic devices which will be included in the tariffs.

4. The public revenues are blocked in the generation, transmission and distribution of electricity for the performance of supply on which the Board pays interest in so far as they form part of the loans borrowed by the Board for performing the public service. On the return of the blocked moneys the Board gets no interest from the consumers.

5. The Board needs back its blocked money to carry out service with a reasonable recompense.

6. The Board is not essentially a commercial organisation to which the consumer furnishes the security deposit to earn interest.

Having entered into a contract with open eyes it is not open to the consumer to say that interest should be paid. The basis of supply of electricity and the conditions on which it is supplied being statutory, the provisions under the conditions of supply that the Board shall not pay interest on the security deposit has staturory basis and accordingly cannot be struck down as arbitrary on the basis of a commercial transaction governing a bank deposit. Therefore, it is submitted that regulation 7 of the Orissa State Electricity Board General conditions of Supply Regulations, 1981 providing that no interest would be payable on security deposit is just and reasonable and is not arbitrary or violative of Article 14 of the Constitution.

Mr. Shanti Bhushan, learned counsel opposing the stand of Rajasthan Electricity Board submits that the only question in this special leave petition is whether Electricity Board is obliged to pay interest on the cash security deposits as the Board compels industrial consumers to secure against default in payment of electricity bills. In the first place, as laid down in *Jagdamba Paper Industries (Pvt.) Ltd.* v. *Haryana State Electricity Board* [1983] 4 SCC 508 this Court has indicated that the security amount should bear the same interest as admissible on fixed deposit of scheduled banks. The interest rate on 10 per cent was decided not really on the basis of admission but on a positive finding. Apart from this, this Court has in several other writ petitions ordered interest at 12 per cent.

It is submitted that the scheme of Indian Electricity Rules of 1956 and the scheme of the Electricity Supply Act also show that the interest on security deposit is supposed to be payable. The Board is not entitled to use the deposits to augment its finances. They are meant only to secure the default in payment of the bills. Section 59 of the Supply Act indicates that the only condition in which the Board could raise the revenue is by adjustment of its tariff. Section 49 of the Act makes provsion for the sale of electricity by the Board to persons other then licensees under the terms and conditions as the Board thinks fit.

It can be seen from the definitions of the Sixth Schedule to the Supply Act that the scheme was meant to be applicable to licensees. The place of the licensees has been taken over by the Board. That is why clause 2 (b) (v) of Schedule VI of the definition of "clear profit" states that the interest on security deposits was to be a part of the expenditure properly incurred by licensees. Then again, the manner in which the accounts are to be maintained by the licensees also shows that the licensees have to make a provision for payment of interest on security deposits.

The High court is right in relying on Section 4 of the Interest Act.

The contract in the instant case is between a consumer, however, high he might be and a monopolistic public utility company. It is clearly an adhesion contract. This Court in *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly* [1986] 3 SCC 156 has clearly held that an unreasonable term of an adhesion contract will not be enforced by the Court.

Interest on security deposit is also admissible under equity or common law. Halsbury's 4th Edn. Vol. 32, paragraph 106 at page 53 defines "interest" as the return or compensation for the use or retention by one person of a sum of money belonging to or owing to another.

The Board is clearly in the position of a trustee in respect of this money since the money is deposited by the consumers in trust with the Board to secure the Board against default in payment of bills. The deposit of security is like the usufructory mortgage which is provided for in Section 76 of the Transfer of property Act. Section 76 G & H

A provide that the mortgagee in a usufructory mortgage would have to keep account of the incomes received from the mortgagee in his use and would have to pay compensation for the benefit derived derived by the user of the mortgaged property. The position here is more or less similar.

B It is not correct to state that security is an advance payment. If it is so, it would amount to Board taking three months advance payment from the consumers. In such a case, the Board connot disconnect the electricity until the period of three months is over. But the rules of the Board enable it to disconnect even if the consumer.fails to pay his bills C on the due date. Then again, a penal interests is charged in case of default. If it is in the nature of an advance payment there is no scope for charging 2-1/2 per cent penal interest.

Lastly, it is submitted that even under English Law interest is D payable on security for electricity as seen from Halsbury's Volume 16 paragraph 129:

> "129. Giving of security. Security required under the Schedule to be Electric Lighting (Clauses) Act 1899 to be given to an electricity board (See the Electric E Lighting (Clauses) Act 1899, Schedule, ss. 25 (2), 27 (2), (3), and paras. 115, 118, ante.) may be by deposit or otherwise, and of an amount agreed or, failing agreement, determined by a magistrates' court, and that court may deal with the caused of the proceedings F and its decision is final and binding on all parties, (bid., Schedule, s. 71; Electricity Act 1947, s. 57 (2), I Sch 4, Part III) Where security is given by way of deposit the party to whom it is given must pay interest at the rate of 4 per annum an every sop for each period of Six months during which it remains so deposited. G (Electric Lighting (Clauses) Act 1899, Schedule, s. 71 proviso; Decimal Currency Act 1969, s. 10 (I)."

UTTAR PRADESH STATE ELECIRICITY BOARD

H The question raised before the High Court was as to the rate of

interest. The respondent (U.P.State Electricity Board) amended the rate of security deposit as Rs. 2 per K.V.A. On such deposit it paid only 3 per cent interest whereas on late payment of the bills it charged more than 24 per cent surcharge from the consumer. The appellants preferred writ petitions in so far as they were denied 12 per cent interest on the deposit taken from the consumers. The Division Bench of the High Court held:

> "These petitions are dismissed with a direction that in case the Supreme Court decided that the interest at a rate higher that 3% should be paid on such security and additional security deposit, the benefit of the same judgment shall also be extended to the patitioners herein, without the necessity of any further proceedings being taken by the petitioners."

Hence, the special leave petitions.

Mr. G. Ramaswami, learned counsel for the appellants would urge that *Jagdamba's* case (supra) has decided that rate of interest. Therefore, that should govern.

In a number of matters this Court has also ordered interest at 12 per cent. The same principle should apply to this case as well.

1. Security Deposit is a complulsory levy. The consumer has no option.

2. Even in contractual matters if the Board, which is a State, does not behave fairly, this Court can always interfere.

3. The Board cannot compel the consumer to make a security deposit without corresponding obligation to pay interest.

4. Deposit does not contemplate appropriation.

5. Prior to appropriation, what is the character of the deposit, requires to be determined. It is not the payment of money by way of

advance.

As to the meaning of intrest it could be gathered from the case in *Riches* v. *Westminister Bank Limited*, 1947 Appeal Cases 390 at 400. In *Union of India* v. *A.L. Rallia Ram* [1964] 3 SCR 164 this Court held that interest is awardable in equity.

A distinction will have to be made between unreasonable and unconscionable. In Administrative Law mere unreasonableness is enough to set aside a contract while unconscionable relates to private law. If interest is not paid security deposit cannot be demanded as this will amount to unconscionable bargain. As to the meaning of unconscionability, Black's *Law Dictionary* (Fifth Edition) at page 1367 can be usefully referred to:

> "Basic test of "unconscionability" of contract is whether under circumstances existing at time of making of contract and in light of general commercial background and commercial needs of particular trade or case, clauses involved are so one-sided as to oppress or unfairly surprise party. *Division of Triple T. Service, Inc.* v. *Mobil oil Corp.*, 60 Misc. 2d 720, 304 N.Y.S. 2d 191, 201. Unconscionability is generally recognized to include an absence of meaningful choice on the part of one of the parties, to a contract together with contract terms which are unreasonably favourable to the other party. *Gordon* v. *Crown Central Petroleum Corn.*, D.C. Ga., 423 F. Supp. 58, 61.
>
> Typically the cases in which unconsionablity is found involve gross overall one-sidedness or gross one-sidedness of a term disclaiming a warranty, limiting damages, or granting procedural advantages. In these cases one-sidedness is often coupled with the fact that the imbalance is buried in small print and often couched in language unintelligible to even a person of moderate education. Often the seller deals with a particularly susceptible clientele. *Kugler* v. *Romain*, 58, N.J. 522, 279 A. 2d 640."

As to the meaning of reasonableness it is stated in *G.B Mahajan and Ors.* v. *Jalgaon Municipal Council and Ors.* [1991] 3 SCC 91 at 109. Under English Law relating to electricity supply as seen from Halsbury's Vol. 16 at paragraph 129 it is clearly stated that interest on security deposit is payable. Therefore, all the more the reason why here also it must be held to be payable.

Mr. Kapil Sibal, opposing the stand of Mr. G. Ramaswami argues that there is no order of this Court adjudicating the rights of the Board on the consumer in respect of the validity of consumption security deposit being condition precedent for the supply of electricity by the Board as well as the liability of the Board to pay interest to the consumer in respect of the consumption security deposit. In the absence of any such adjudication the question of Board being bound by the previous orders of this Court. does not arise. In cases where 12 per cent interest was awarded it was only by way of ad interim measure. The other orders are also not conclusive on this aspect. Therefore, the matter will have to be decided afresh in the instant cases.

Far from being a compulsory levy, the consumption security deposit is not only a deposit in cash to safeguard recovery of electricity dues for the energy supplied to the consumer on credit but also a security towards payment or satisfaction of any money (For example, theft), which may become due and payable to the Board by the consumer.

The obligation to pay interest to the consumer proceed on the assumption that the Board is keeping the security deposit and depriving the consumer of the use of the money which is alleged to be earning interest with the Board. This assumption is not warranted for the following reasons:

1. The cycle of billing demonstrates that in the very nature of things the consumer is supplied energy on credit. The security deposit is hardly sufficient to secure the payment to the Board by the time the formal bill by the Board is raised on the consumer.

2. The consumption security deposit indeed represents only part of the money which is payable to the Board at the end of the billing

A cycle. The said amount can be appropriated at any time towards the payments that are due to the Board and reflected in the formal bill.

3. In the nature of billing cycle it is the Board which has to receive interest on the energy supplied to the consumers on credit.

B

4. The concept of interest earned on a fixed deposit is alien to the issue. The liabilities of the consumer increase on a daily basis depanding on the level of supply and consumption. Therefore, the amounts due are liable to be appropriated forthwith. That is not possible where moneys are placed either on fixed deposit or a savings C bank account.

It is incorrect to contend that the amount is lying in trust with the Board. The amount lying with the Board could also be appropriated for satisfaction of any amount liable to be paid by the consumer for D violation of any conditions of supply in the context of wide scale theft of energy and tempering with meters. Therefore, the security deposit serves not only to secure the interest of the Board but also serves as a deterrent on the consumer in discharging his obligation towards the Board. Under section 49 the Board is enabled to supply electricity upon such terms and conditions, as it thinks fit under Article 226 of the E constitution, the Court is to conduct a limited scrutiny whether by imposing such a condition the Board has not acted as a private trader and thereby shed off its public utility character. Should the Coust come to the conclusion that the Board has not acted as a private trader and the nature of deposit has a rational relationship, the issue will fall F outside the scope of judicial purview.

Section 49 must be read alongwith Section 59. The contention that the Board can achieve a surplus by adjusting its credit does not flow from the language of Section 59. The requirement of consumption security deposit is a condition of supply. It has a direct bearing on the G operation of the Board. Hence it is *'per-se'* reasonable and constitutional.

If there is a revision in the rate of tariff there has to be an upward revision of the consumption security deposit since it has a direct H bearing on the level of supply in consumption of electricity. In October

1986, the tariffs in the State of Uttar Pradesh were adjusted upwards. The revision in the form of an addtional security deposit with interest at the rate of 3 per cent was made in January 1987. These facts would suggest the rationale in the imposition of additional security deposit. This being a condition of supply no reasons need be given at the time of upward revision. *Union of India* v. *A.L Rallia Ram* [1964] 3 SCR 164 relates to the award of interest by an Arbitrator. The nature of consumption security deposity is such that it represents the moneys of the Board. There is no relationship of debtor and creditor. There is no deprivation of property which alone will entail the consequences like payment of interest.

The learned counsel has also filed a tabulated statement to show that the security deposit made by the appllant is 72.42 lakh for all industries while the arrears in electricity come to 965.73 lakh. A formal chart has been filed based on the figures for August, September and October 1991 to show that after the third month the consumption charges total to 45.09 lakh. While security that is offered is 15.95. The same is the position with reference to other industries as well concerning whom the learned counsel has filed a tabulated statement. This so to establish how the Electricity Board has supplied electricity on credit to the various consumers and the security deposit is hardly sufficient even for one month's consumption.

BIHAR

SLP 11799 *of* 1989

The appellant (Bihar Electricity Board) provided 4 per cent interest per annum on security deposit. When this was questioned in C.W.J.C. No. 3000 of 1987 in the matter of *Dhanbad Flour Mills*, a Division Bench of the High Court was of the view that an interest at 4 per cent appeared to be unreasonable and directed the Board to examine the question of enhancement of the rate of interest. Similar directions were issued in another case. The appellant-Board after examining the matter issued a Notification on 27th of May, 1988 and enhanced the rate of simple interest to 5 per cent per annum. This was because the amount of security deposit was kept in the savings account which earned 5 per cent interest which was passed on the consumer. The said notification was questioned before the High Court by seeking

A a writ of mandamus claiming interest at the rate payable on fixed deposit by a nationalised bank in view of the decision by this court in *Jagdamba's* case (supra). By the impugned judgment the High Court directed payment of interest on security deposit at the rate payable on fixed deposit by nationalised banks. Aggrieved by this judgment the Bihar State Electricity Board has preferred the special leave petiiton.

B

Mr. G.L. Sanghi, learned counsel appearing for the Bihar Board draws our attention to clause 15.3 of the tariff notification and submits that the consumption security deposit is not only for the supply of energy on credit but also for satisfaction of any money payable by him.
C If the consumer does not pay the dues in time the arrears of consumption charges will have to be adjusted against the security deposit. Therefore, the security deposit can never be kept in bank under fixed deposit. This is the reason why the amount is kept in savings bank account and whatever interest is earned thereon, that is passed on to the
D consumer. Therefore, the High Court was not right in awarding a higher rate of interest. In other respect, the learned counsel adopts the argument of the other learned counsel appearing for the various Boards including the contention that *Jagdamba's* case (supra) did not lay down the rate of interest.

E Normally, in market transaction when any one supplies on credit to a consumer a guarantee is taken for the payment on dues. Such a guarantee may be in the shape of a bank guarantee, fixed deposit. Similarly, the Board when it supplies electricity on credit it keeps the security for the amount of supply of the electricity. According to
F Board's standing order No. 433 dated 31.12.74, dues at any time are not allowed to exceed amount of security deposit and adjustment is to be made against the security deposit after the disconnection of supply. Therefore, it is not correct to state that the security is not adjusted towards the bill and is kept in tact.

G Section 24 of the Electricity Act is the only provision to ensure payment as indicated in *Bihar State Electricity Board Patna* v. *M/s. Green Rubber Industries and other* [1990] 1 SCC 731.

H In meeting these arguments it is submitted by Mr. M.P. Jha, learned counsel for the respondent that the stand of the Board in

making payment of interest at 4/5 per cent is clearly arbitrary. The security aspect of the Board requirement can easity be satisfied by the board resorting to liquidation of security deposit. As a matter of fact, the security deposit was never adjusted by the appllant-Board. As a result large amounts were kept without investing them in fixed deposit. Learned counsel for the respondent relies on the orders issued by this Court and submits that the question of interest is settled by the ruling in *Jagdamba's* case (supra) . Section 24 is of no help for payment of a lower percentage of interest.

W.P. No. 578 of 1987

In this writ petition, under Article 32 of the Constitution, the challenge is to the increase of security deposit for L and H power consumers above 100 B.H.P. It has been increased from Rs. 170 to Rs. 200. No reason whatever has been assigned for such an increase of security deposit. That will be bad in law as laid down in *Central Inland Water Transport Corporation Limited* (supra). This is the argument of Mr. Gobind Mukhoty. This is countered saying that when there is an increase in tariff the security deposit also is liable to be increassed.

PUNJAB

W.P. NO. 1317 of 1990

In this writ petition, the challenge is to the validity of Sections 49 and 79 of the Supply Act. According to the respondent (Punjab State Electricity Board), the writ petition is not maintainable. A challenge to the imposition of advance consumption of deposit does not involve any fundamental right.

The Punjab State Electricity Board is a licensee of the State of Punjab. The electrical energy is generated through hydro as well as thermal plants for ultimate sale to consumers. 50% of powers generated through hydro while the remaining through thermal plants which consume coal/oil. The coal companies and those major suppliers of power plants are demanding cost of coal in advance. On these advances no interest is payable to the Board. Therefore, while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers the consumers also use and consume electricity

A on credit ranging from 2 to 3 months depending upon the category of consumers. To off-set part of the amount that the consumer owes to the Board constantly and also to ensure timely payment of advances by the Board to its suppliers an advance consumption deposit is insisted upon before commencing supply to the consumer. If this is not so taken the Board will be left with no other option than to increase the tariff. This B advance deposit cannot be termed as a fixed deposit as the amount cannot be utilized against non-payment of dues from consumers. Besides, the consumers can also ask for the refund. Sections 49 (1) and 79 (j) cannot be termed as arbitrary. In fact, this Court has upheld the validity of Section 49 (1) in *Jagdamba's* case (supra).

C

Lastly, it is submitted that the Board is generating electricity and each unit so generated costs the Board rupee one per unit. The Board is selling at an average rate of 50 paisa per unit to the consumer which includes the agricultural sector. Therefore, the amendment to clause D 23 of abridged conditions of supply requiring to pay advance consumption deposits is perfectly reasonable.

Mr. P.P. Rao, learned counsel appearing as intervenor on behalf of Calcutta Electricity Supply Corporation supplements the submissions of Mr. Soli J. Sorabjee. The deposit though called security E deposit is really an adjustable advance payment of consumption charges. The amount is revisable from time to time depending upon the average consumption charges on the basis of actual consumption over a period.

F The true nature of transaction in these cases is one of advance for consumption of electricity estimated for a period of three months subject to adjustment / revision, if necessary. Such an advance is liable to be made good and kept at a stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, make good the shortfall in consumption G charges and the security deposit before actual disconnection of supply which takes at least about three months. In short, it is in the nature of a running account. The security deposit does not remain in tact like a fixed deposit but gets depleted day after day depending on the extent of consumption More often than not, the consumption charges and H other dues exceed the security deposit. That necessitates calling for

additional advance to make up a shortfall. In the absence of any usage or contract or any provision of law requiring payment of interest, interest is not payable for wrongful detention of money. In this case, there is no wrongful detention of even. Section 4 (2) of the Interest Act has no application to this deposit. When electricity supply is duly made with a consequential liability to pay for each day's consumption, the so-called security deposit is not a deposit in the real sense for the consumers to claim the benefit of Interest Act.

A

B

We will now proceed to consider the correctness of the above submissions with reference to the following aspects:

C

(i) Whether Section 49 is bad for want of guidelines.

(ii) The nature of consumption deposit, irrespective of the nomenclature by which it is called.

D

(iii) (a) The liability of the Electricity Board to pay interest.

(b) Whether the clause in the terms of supply providing for non-payment of interest is unconstitutional or arbitrary.

E

(iv) The demand for additional consumer deposit-Whether valid?

VALIDITY OF SECTION 49

F

The law relating to electricity is principally contained in two Acts.

(i) The Indian Electricity Act of 1910 (hereinafter referred to as the "Electricity Act"). This provides for grant of licences in relation to supply of electricity and the projects of undertakings. It also provides for supply of electricity including the protective clauses.

G

(ii)The Electricity (Supply) Act of 1948 (hereinafter referred to as the "Supply Act") provides for constitution of State Electricity Boards, the powers and duties of such Boards. Certain important

H

A provisions of the Act may now be seen.

Section 2 is interpretation Section,

Under Section 2 (2) the Board means a State Electricity Board
B constituted under Section 5.

Under Section 2 (10) states that regulation means regulations made by the Board under Section 79.

Section 5 deals with the constitution and composition of State
C Electricity Board.

Section 49 is the provision for sale of electricity by the Board to persons other than the licensees. Sub-section (1) of the said Section commences with the words "Subject to the provisions of this Act and
D of Regulations". This means if there are any provisions regulating the Board in the matter of supplying electricity to any persons not being a licensee then the supply by the Board will be subject to all those provisions. It has been so laid down in *Mysore State Electricity Board* v. *Bangalore Woollen, Cotton and Silk Mills Ltd.*, AIR 1963 SC 1128
E at page 1136:

> "The expression "Subject to the provisions of this Act" merely that if there are any provisions regulating the Board in the matter of supplying electricity to any person not being a licensee, then the supply by the
F Board will be subject to those provisions. No provision has been brought to our notice which regulates the Board in the matter of the charges which it may fix for the supply of electricity."

G This Court had occasion to deal with the scope of the said Section and Section 59. In *Hindustan Zinc Ltd.* v. *Andhra Pradesh State Electricity Board* [1991] 3 SCC 299 at pages 317-319 it has been observed thus:

> "Section 49 makes provision for the sale of electricity
H by the Board to persons other than licensees. Sub-

section (1) starts with the words "Subject to the provisions of this Act and of regulations, if any, made in this behalf". This means that the provision made therein is subject to other provisions of the Supply Act and the regulations. It then proceeds to say that the Board may supply electricity to any person not being a licensee upon 'such terms and conditions as the Board thinks fit' and may for the purposes of such supply frame 'uniform tariffs'. Sub-section (2) then enumerates several factors which the Board is required to 'have regard to' in fixing the uniform tariffs. The meaning of the expression 'have regard to' is well settled. it means that the factors specifically enumerated shall be taken into account while performing the exercise which in this case is fixation of the uniform tariffs. Ordinarily, therefore, uniform tariffs are required to be framed by the Board for making such supply. Sub-section (3) then proceeds to say that nothing in the earlier enacted provisions shall derogate from the power of the Board, "if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person", having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and 'any other relevant factors'. Sub-section (4) then says that in fixing the tariffs and terms and conditions for the supply of electricity, `the Board shall not show undue preference to any person., In other word, sub-section (4) provides against any unreasonable discrimination in fixing the tariffs and terms and conditions for supply of electricity. The power of fixation of tariffs in the Board is provided in this manner by Section 49 of the Supply Act which requires the fixation of uniform tariffs ordinarily having regard particularly to the specified factors and enables fixation of such tariffs for any person having regard to the factors expressly stated and any other relevant factors, providing further that no unreasonable or undue preference shall be shown to any person by the Board in exercise of its powers of fixing the tariffs.

A B C D E F G H

A The next important provision is Section 59 of the Supply Act. For appreciating the argument based on Section 59, it is necessary to bear in mind the distinction in Section 59 as it stood prior to 1978, as amended by Act 23 of 1978 and finally as amended by Act 16 of 1983, quoted earlier.

B

Prior to 1978, Section 59 required the Board, as far as practicable and after taking credit for any subventions from the State Government under Section 63, not to carry on its operations under this Act at C a loss and for this purpoess, it was empowered to adjust its charges accordingly from time to time. Under the provision as it then existed, the main thrust was to avoid the Board incurring any loss and for that purpose, it could adjust its charges accordingly from time to time. Section 59 as amended by Act 23 of 1978 D required the Board, after taking credit for any subventions from the State Government under Section 63, to carry on its operations under this Act and to adjust its tariffs so as to ensure that the total revenues in any year after meeting all expenses properly chargeE able to revenue including those specified, left such surplus as the State Government specified from time to time. The shift was, therefore, towards having a surplus as the State Government specified from time to time. Sub-section (2) then provided guidelines for F the State Government in specifying the surplus under sub-section (1) and mentioned the factors to which regard was to be had for this purpose. The effect of the amendment made in Section 59 by Act 16 of 1983, which came into effect from April 1, 1985, was to provide for a minimum surplus of three per cent or G such higher percentage as the State Government is to specify in this behalf. In other words, prior to 1978 amendment, the requirement from the Board was towards ensuring a surplus as specified by the State Government, and after the 1983 amendment the Board is required to ensure a surplus of at least three per cent H unless the State Government specifies a higher sur-

plus. This is the scheme of Section 59 and it is Section 59 as amended by 1978 Act but prior to its amendment by the 1983 Act, with which we are concerned in the present case.

It cannot be doubted that Section 59 requiring the Board to adjust its tariffs for the purpose of Board's finance is to be read along with Section 49 which provides specifically for fixation of tariffs and the manner in which that exercise has to be performed while dealing with any question relating the revision of tariffs.

..... The effect of 1983 amendment, which came into force from April 1, 1985, is that the Board entitled to adjust its tariffs to ensure generating a surplus of not less than three per cent even without such specification by the State Government and when the State Government specifies a higher surplus, then the Board must ensure generating the higher specified surplus. This is, of course, subject to the accepted norm of the Board acting in consonance with its public utility character and not entirely with a profit motive like that of a private trader. The pre-1978 concept of the Board's functioning to merely avoid any loss is replaced by the shift after 1978 amendment towards the positive approach of requiring a surplus to be generated, the quantum of Surplus being specified by the State Government, with a minimum of three per cent surplus in the absence of the specification by the government of a higher surplus, after the 1983 amendment. This construction made of Section 59, as it stood at different times in *Govinda prabhu* case [1986] 4 SCC 198 indicated carlier cannot be faulted in any manner. In *Govinda Prabhu* case the same argument which is advanced before us was expressly rejected. We are of the same view."

The next Section is Section 79 which talks of power to make

A regulations. Clause (j) deals with the principles governing the supply of electricity by the Board to persons other than the licensees under Section 49. In accordance with this, each of the Boards has framed regulations. All consumers are required to execute agreements governing the supply of energy.

B The attack against Section 49 is that it does not contain any norm or guideline with regard to framing of terms and conditions for the supply of electricity and in particular, the demand of payment of interest on the amounts due to the Board. Further, the principle of fairness of action has not been explicitly set out so as to make it a visible C guide. The words occurring in the Section "as the Board thinks fit" must be construed as "reasonably thinks fit". We are unable to countenance this argument. A careful reading of Section 49 clearly descloses as was noted in *Hindustan Zinc Ltd.* v. *A.P.S.E.B.* [1991] 3 SCC 299 at 317 sub-section (1) of the said section starts with the words D "Subject to the provisions of the Act and all regulations, if any, made in this behalf". Therefore, the Board has to conform to the various provisions of the Act and the regulations. Section 49 contains two powers:

1. To prescribe terms and conditions of supply; and

E

2. fix the tariff.

No guidelines are required in this regard. In *Jagdamba Paper Industries Pvt. Ltd.* v. *Haryana State Electricity Board* [1983] 4 SCC F 508 at 513-14 it was pointed out as follows:

> "We are of the view that the Board has been conferred statutory power under Section 49 (1) of the Act to determine the conditions on the basis of which G supply is to be made. This Court in *Bisra Stone Lime Company Ltd.* v. *Orissa State Electricity Board* [1976] 2 SCR 307, took the view that enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. *What* applied *to the tariff would* H *equally apply to the security, that being a condition in*

the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time of entering into their respective supply agreements. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck down as being without jurisdiction. Section 49 (1) of the Act clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit. In exercise of this power the Board had initially intruduced the condition regarding security and each of the petitioners had accepted the term."

(Emphasis supplied)

Where, therefore, under Section 49 read with Section 79 (j) regulations are made, the validity of the regulations could be examined by the Court, whether they are reasonable or not.

In *Southern Steel Ltd. Hyderabad* v. *The Andhra Pradesh State Electricity Board* AIR 1990 Andhra Pradesh 58 at 66-67, it was observed:

"Before we proceed to deal with the rival contentions, it would be appropriate to notice the scope of judicial scrutiny by this Court in such matters. Acting under Art. 226 of the Constitution, this Court does not sit as an appellate authority over the Electricity Board. Indeed, the Act has not chosen to provide an appeal against the terms and conditions under S.49. The jurisdiction exercised by this Court under Art. 226 is supervisory in nature. It is to ensure the observance of fundamental right the rule of law, and to keep the authorities within their bounds. Undoubtedly, the Electricity Board is a 'State' within the meaning of Art. 12, and hence it is subject to Parts III and IV of the Constitution. The scope of enquiry, therefore, would be to examine whether the power conferred

upon the Board by S.49 of the Act has been exercised so unreasonably and arbitrarily that interference by this Court is called for.

For the purpose of this enquiry it is not necessary for us to go into the question whether the terms and conditions notified under S.49 are statutory in nature or not. We shall proceed on the assumption that they are not statutory. We shall also proceed on the assumption that the terms and conditions notified under S. 49 ought to be reasonable, in the sense that they must be related to the object and purpose for which they are issued. We are equally aware that the power under S. 49 cannot be allowed to be used for oblique purposes, or for purposes unrelated to the one sought to be achieved by a given condition."

In *M/s B.R. Oil Mills, Bharatpur* v. *Assistant Engineer (D) R.S.E.B., Bharatpur* AIR 1981 Rajasthan 108 at 109, it was obersved:

"Where demand for deposit of cash security for one month's estimated consumption charges and bank security equal to two months estimated charges as contemplated by Regulation 20 read with the Schedule thereto was made by the Electricity Board from a consumer of high tension electricity, the demand could not be said to be unreasonable and the consumer would not be entitled to continuation of the energy under Sec. 24 of the Electricity Act on his failure to deposit such security, even if no agreement had been entered into between the consumer and the Board after the commencement of high tension supply. Once the supply for electricity had commenced the consumer was bound by the terms and conditions of supply contained in the Regulations. Further, in such a case, merely because the Board did not encash or could not encash a small portion of the security deposited in the form of National Saving Certificates before coming into force of the Regulations, it could

not be said that the demand of cash security in the form of Bank guarantee by the Board under the Regulations was unreasonable. furthermore, the demand of security from the consumer which was in accordance with the Regulations framed by the Board could not be said to be unreasonable merely because no interest is paid on the cash security deposited by the consumer." A B

In other words, the terms and conditions notified under Section 49 must relate to the object and purpose for which they are issued. Certainly, that power cannot be exercised for a collateral purpose. In this view, we hold Section 49 as valid. C

NATURE OF CONSUMPTION SECURITY DEPOSIT

Each of the Electricity Boards before us is a State within the mening the meaning of Article 12 the Constitution of India. *The Boards are different from licensees.* (Emphasis supplied) Each of the Board has framed the terms and conditions of supply. One such condition relates to security deposits. Such a deposit varies from Board to Board. For example, under the terms and conditions notified by Andhra Pradesh Electricity Board under Condition No. 28.1.1 the consumer is required to deposit with the Board a sum in cash equivalent to estimated three months consumption charges. In the case or Rajasthan, the security is in the form of cash for one month and bank or insurance guarantee for two months. D E

The legislative sanction behing the power of the Board to direct a consumer to furnish security may be examined. It has already been seen that the Supply Act is complementary to the Electricity Act, 1910. Section 26 of the supply Act states that the Board shall have all the powers and obligations of a licensee under the Electricity Act. And this shall be deemed to be a licence of the Board for the purpose of the Act. Under the regulations framed by the Board in exercise of powers of Section 49 read with Section 79 (j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If, therefore, the regulations prescribed a security deposit that will have to be complied with. It also requires to be noticed under clause (6) of Schedule II of F G H

A the Electricity Act that the requisition for supply of energy by the Board is to be made under proviso (a) after a written contract is duly executed with sufficient security. This, together with the regulations stated above, could be enough to clothe it with legal sanction. In cases where regulations have not been made Rule 27 of the Rules made under the Electricity Act enables the adoption of model form of draft B conditions of supply. Annexure VI in clause 14 states that the licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed in his premises. Thus, the Board has the power to make regulations to demand security from the consumers.

C

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

The deposit though called security deposit is really an adjustable D 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 E to all the Boards.

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. F We will give one illustration as is in the case of Rajasthan. The following is the billing cycle:

(a) Consumption period	30 days
G (b) Period consumed after taking the meter readings to issue bills.	10 days
(c) Period allowed for payment	17 days
H (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

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.

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.

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 againstt the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability.

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 instiutions. This is best

A 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 B 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 kolo litre of furnance oil is required. The coal companies/Coal India LImited together with major suppliers of power plant like M/s. BHEL demand cost of coal/ C 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. D 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 opon E revolving letters of credit in favour of Coal companies/Coal India Limited. Despatch of coal is only against the letter of credit.

From the above, it is clear that while the Electricity Board is required to make colossal advances to generate electricity and supply F 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 G 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. In demanding security deposit it is open to the Court to take note of pilferage as laid down in *Ashok Soap Factory* v. *Municipal Corporation* H *of Delhi* J.T. (1993) 1 S.C. 128 at page 137:

> "..... The variation in the electricity consumed by different consumers indicated that the charge of pilferage of electricity and gross under-utilisation or consumption of electricity compared to the sanctioned load was not without foundation....."

The meaning of he term "deposit" is given in *Corpus Juris Secundum*, Vol. 26 A,P. 194 quoted in *Davidson* v. *U.S., C.C.A.Pa.*, 292 F. 750, 752 as follows:

> "In the sense of an Act. A deposit has been described as a mere incident of custody, and, in its ordinary signification, implies something more than mere possession, negatives all idea of loan with contemplation of use for profit, and has been defined as an act by which a person recieves the property of another, binding himself to preserve it and return it in kind; the act of one person giving to another, with his consent the possession of personal property to keep for the use and benefit of the first or of a third party. It may mean a permanent disposition of the thing placed or deposited, or a mere temporary disposition or placing of the thing."

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

Three months' security deposit cannot be characterised either unreasonable or arbitrary. This Court had occasion to point out in *Jagdamba Paper industries* Pvt. (supra) at paragraph 10 which reads as under:

> "We agree, however, on the facts placed that the stand of the Board that a demand equal to the energy bill of two months or a little more is not unreasonable. Once we reach the conslusion that the Board has the power to unilaterally revise the conditions of supply, it must follow that the demand of higher additional security for payment of energy bills is unassailable, provided

A that the power is not exercised arbitrarily or unreasonably."

Several High Court decisions also had taken this view as seen from *K.C. Works* v. *Secreatary APSEB. Vidyut Soudha* AIR 1979 Andhra Pradesh 291 at 294:

B

"The reasonableness of such a requirement is explained by the Board in its counter in W.P. No. 2359/75 out of which W.A. No. 156 of 1977 arises. In the counter it was stated as follows:-

C

"The consumer is billed for such month separately. The consumers electricity consumption during the month is billed at the end of the succeeding month and 30 days time is given to him for payment of the bill. If

D he does not pay the bill his supply is liable to be disconnected after giving one week's notice under Section 24 of the Indian Electricity Act, 1910. Meanwhile he will be consuming the power. So by the time the supply is disconnected to a defaulting consumer he would have consumer energy for 3 months. The

E Board's interest requires that there should be some protection by way of security of advance payment in respect of the consumption of this three months period."

F This is how the Board sought to explain the reasonableness of the requirement of security representing three months average consumption charges. Nobody can say that this is unreasonable. For three months a consumer can go on consuming electrical power without paying any charges. It is therefore, eminently

G reasonable for the Board to require the consumer to furnish security for three months charges. Therefore, we are satisfied that the requirement of security for three months consumption charges is reasonable."

H At page 295 it was observed thus:

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

In *Municipal Corporation for Greater Bombay* v. *M/s D.M. Industries* AIR 1984 Bombay 242 at 256 it was observed thus:

"This brings us to the last argument advanced by Mr. Hidayatullah that Clause 12 of the draft agreement is arbitrary and unreasonable. The argument was that the power to impose conditions cannot be exercised to impose unreasonable conditions and it must also be ascertained whether the condition achieves the object for which it is imposed. On principle, the proposition is undisputable. Clause 12 which can be described as unreasonable and whether this Clause has no nexus with the object of the Act and the Rules. The argument appears to be that if the object of security is to secure payment of bills, then insistence on cash deposits would be unreasonable because the object could also be served by furnishing of any security and it is said that the consumer was willing to furnish a bank guarantee. In addition, it is urged that the period of consumption for which the security is required should not exceed two months and, therefore, the determination of three months is arbitrary."

In *Haryana Ice Factory* v. *Municipal Corporation of Delhi* AIR 1986 Delhi 78, It was held thus:

"Also, the demand of the security was corelated to the

A 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 changes due. The court cannot enter into mathematical calculations to come to a conclusion that instead of three months, it should be 2-
B 1/2 months. The fixing of the period of security equal to energy consumption of three months is reasonable. 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
C would depend upon the billing cycle adopted by the Haryana State Electricity Board."

In *Southern Steel Ltd. Hyderabad* v. *The A.P. State Electricity Board* AIR 1 990 Andhra Pradesh 58 at pages 68-69 it was observed:

D "It is also stated by the Board that huge sums are required by it as rotating capital; that it borrows large amounts from organisations like L.I.C. and Banks; that it pays interest to them, and that in such circumstances it is well entitled to require the consumer to co-operate by paying their bills
E regularly, by giving security deposits, and by conforming to the terms and conditions of supply. It is argued that this consideration was also one of the bases of condition No. 28. We do not think it necessary to express any opinion on this question, though the truth of the matter cannot be denied. There are two views upon the matter. The petitioners say
F that the interest burden should be reflected in the tariffs, wihle the Board says that interest burden can be reflected in consumption deposits, and not necessarily in tariffs. All that can say is that there no hard and fast rule in this behalf. The interest burden can be reflected either in tariffs, or can be sought to be set off by calling upon the consumers to make
G deposits. In this case, however. It is unnecessary to go into this aspect, since the requirement of three months' deposit, in our opinion, cannot be said to be unreasonable and unjustified having regard to the facts mentioned above. It cannot be said that the said condition is so unreasonable and arbitrary as to call for interference by this Court under Art.

H

226 of the Constitution. We reiterate that even if this court comes to the conclusion that the deposit should not be 3 months, but 2 months 7 days, or 2-1/2 months, it would not be entitled to interfere in the matter, not being an appellate authority. It cannot substitute its own opinion for the opinion of the Board. It can interfere only when the exercise of power is shown to be arbitrary, and unrelated to the object sought to be achieved."

We are in agreement with the above extracts.

The liability of Electricity Board to pay interest on Security Deposit:

Now, we come to the crucial question as to whether interest is payable on security deposit or advance consumption deposit. We will examine from the following angle:-

(a) The scheme of Electricity Acts.

(b) Schedule VI of the Supply Act.

(c) Interest Act, 1978

(d) Equity or Common Law.

(a & b) *Scheme of Electricity Acts & Schedule VI of Supply Act:*

It is the submission of Mr. Shanti Bhushan, learned counsel appearing for the respondent against Rajasthan Electricity Board that the scheme of the Electricity Act and Supply Act togther with the rules suggest the payment of interest. The Board is not entitled to utilize the security deposits for augmenting its finances as they are meant to secure the Board against default in payment of the bills. The correctness of this argument may now be seen:

There is no statutory provision which casts an obligation on the Board to pay interest on security deposit. However, reliance is placed on model form of draft conditions of supply as is found in Annexure VI, traceable to Rule 27 of Indian Electricity Rules, 1956. Clause 14 relating to security deposit of the said Annexure reads:

A *"..... Interest at the rate of..... per cent per annum will be paid by the licensee on deposits exceeding Rs. 25/-."*

(Emphasis supplied)

The model form is applicable ony to a licensee as defined in
B Section 2 (4) of the Electricity Act.

Though Rule 27 prescribes a model form it is not compulsory even for a lincesee to adopt the model condition of supply. This is because Rule 27 itself stipulates.... "the model conditions of supply contained in Annexure VI, *may* with such variations as the circumstances of each
C case require, be adopted by the lencesee." Therefore, there is an option available to adopt with such modifications. In such a case, the adoption of the model form becomes permissive. In this connection, Section 26 of the Supply Act, to which we have made a reference earlier, must be looked at. Though the Board is to have powers and obligations of a
D licensee under the Electricity Act, the second proviso to this Section assumes importance. It reads:

E "Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced."

Second proviso of the Supply Act leads us to Schedule VI. This Schedule has been framed in exercise of powers under Sections 57 and
F 57A. In defining "clear profit" paragraph (2) of clause XVII, Item (v) makes a reference, as interest of security deposits which is a part of expenditure properly incurred by the licensee. From this it is impossible to hold tht this clause imposes an abligation on the licensee to pay interest on security deposits. All that would mean is, if interest is paid
G then it qualifies as an item of expenditure properly incurred. This is the position with regard to licensee. But this cannot apply to the Board, which as stated above, is not a licensee. For the same reason Item L 1(c) of Form IV of the Electricity Rules relating to interest paid and accrued on consumers' security deposits is of no avail because that relates to *the manner of keeping accounts by the licensee, not being applicable to*
H *a Board.*

In the above premises, it follows that there is nothing to indicate under the scheme of the Electricty Act or Schedule VI of the Supply Act that interest must be paid on the security deposit.

(c) Interest Act: applicability.

As regards the applicability of Interest Act, we find that the Division Bench of Rajasthan High Court has erred in holding that it is applicable. Section 4(2) (g) of the Interest Act of 1978 reads as under:

> "Notwithstanding the aforesaid and without prejudice to the generelity of the provisions of sub-section (1), the Court shall in each of the following cases allow interest from the dates 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."

This section has no application to a case where on account of a contractual term or a statutory provision payment of interest is not permitted.

A careful reading of Section 4(2) of the Interest Act would disclose that it merely enlarges the category of cases mentioned in Section 4(1). Even otherwise, there is nothing to indicate that section 4(2) could override other statutory provisions or a contract between the parties. No doubt, Section 4(2) contains a *non-obstante* clause. But, such a clause is restricted to the provisions of Interest Act and cannot extend to other laws or a contract between the parties.

Accordingly we overrule the judgment of Rajasthan High Court which holds the Interest Act is applicable.

A The deposit made cannot be equated to a fixed deposit. It has already been seen that in the case of daily supply of electricity, there is a consequential liability to pay for each day's consumption of electricity. To ensure that payment, the security deposit is furnished. Hence, it cannot be equated to a deposit at all. It is in the nature of a running current account.

B

(d) *Position in Equity or Common Law*

If this be the position, could interest be claimed either on equity or common law? The argument on behalf of the consumers is, if money C belonging to any person is used by someone else he is oblilsed to pay interest for the period of its user. Halsbury's Volume 32 (page 53 para 106) defines "interest" as "the return or compensation for the use or retention by one person of a sum of money belonging or owed to another". Therefore, it is contended that the Board is clearly in the D position of a trustee in respect of this money since the money is deposited by the consumer in trust with the Board to secure the Board against defult in payment of interest. The object of the deposit is to secure the payment of consumption charges. These charges may very depending upon the daily consumption, depending on the level of supply. The amount due by way of consumption charges would also be E liable to be appropriated. Therefore, it is incorrect to state that the Board is a trustee. The relationship between the Board and consumer is not that of a trustee and a beneficiary but a depositor and depositee. This is not even a case of a constructive trust under Section 90 of the Indian Trust Act, since no advantage is gained by the Electricity Board F in derogation of the rights of the consumer in view of what we have observed above.

Strictly speaking, the word "interest" would apply only to two cases where there is a relationship of debtor and creditor. A lender of money who allows the borrower to use certain funds deprives himself G of the use of those funds. He does so because he charges interest which may be described as a kind of rent for the use of the funds. For example, a bank or a lender lending out money on payment of interest. In this case, as already noted, there is no relationship of debtor and creditor.

H We may now refer to Halsbury's Vol. 32 para 108:

"108. When interest is payable at common law. At common law interest is payable (1) where there is an express agreement to pay interest; (2) where an agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned; (3) in certain cases by way of damages for breach of a contract (other than a contract merely to pay money) where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.

Except in the cases mentioned, debts do not carry interest at common law."

Consumption security deposit does not fall under any of the categories mentioned above. Para 109 says:

"Equitable right to interest. In equity interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor, such a mortgagor and mortagagee, obligor and obligee on a bond, personal representative and beneficiary, principal and surety, vendor and purchaser, principal and agent, solicitor and client, trustee and beneficiary, or where the debtor is in a fiduciary position to the creditor. Interest is also allowed on pecuniary legacies not paid within a certain time, on the dissolution of a partnership, on the arrears of an annuity where there has been misconduct or improper delay in payment, or in the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which would have entitled the plaintiff to interest at common law, or has Wrongfully prevented the plaintiff from doing something which have so entitled him."

This paragraph is also inapplicable to the present case.

A Even a case of wrongful detention of money cannot arise. In *Bengal Nagpur Railway* v. *Ruttanji Ramji* AIR 1938 PC 67 the question arose whether interest was payable on damages on account of wrongful detention of money. It was held:

B "The Interest Act however contains a proviso that "interest shall be payable in all cases in which it is now payable by law." This proviso applies to cases in which the Court of equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in *Maine and New Brunswick Electrical Power Co. Ltd.* v. *Hart*, C 1929 AC 631:

"In order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as for example, non-performance of a contract of D which equity can give specific performance."

"The present case does not however attract the equitable jurisdiction of the Court and cannot come within the purview of the proviso." E

The very passage was noted by this Court in *Union of India* v. *A.L. Rallia Ram* [1964] 3 SCR 164 at 188-189.

The argument of Mr. G., Ramaswami, learned counsel, that the F deposit does not contemplate appropriation is not correct because in the nature of contract it is liable to be appropriated for the satisfaction of any amount liable to be paid by the consumer to the Board for violation of any conditions of supply in the context of wide scale theft of energy, tempering with the meters and such other methods adopted by the consumers. Therefore, the said consumption security deposit G serves not only to secure the interest of the Board for any such violation but should serve as a deterrent on the consumer in discharging his obligations towards the Board.

Mr. G. Ramaswami would rely on *Riches* v. *Westminister Bank* H *Limited* 1947 Appeal Cases 390 at 400.

That is a case which arose under Income Tax Act. That has no application to this case. What came up for consideration in *A.L. Rallia Ram's* case (supra) was the power of the Board to award interest. Hence, that case has no application. Accordingly, it is held that the claim for interest cannot be legally founded either on common law or equity. As is rightly contended by Mr. Kapil Sibal, learned counsel and the other learned counsel appearing for the various Boards, it is the Board which should be entitled to receive interest on energy supplied to the consumers on credit as the consumers enjoy a credit facility as noted already. We are also unable to accept the argument advanced on behalf of consumers that because the Electricity Boards charge interest on belated payments, interest must be paid on security deposit. Interest on belated payments is by way of penalty. That has no bearing.

Clause providing for non-payment of interest: Whether unreasonable?

While the terms and conditions of supply of Andhra Pradesh, Uttar Pradesh and Bihar provide for payment of interest at certain rate, in the case of Rajasthan and Orissa the Boards have clearly stipulated that no interest shall be payble on the securities furnished to the Board. Whether that clause could be considered unconstitutional or arbitrary? In examining the constitutionality of this provision, in that it is violative of Article 14 of the Constitution of India, the following factors have to be borne in mind:

1. Article 14 does not mandate mathematical exactitude or scientific precision.

2. The mode and the period of security *vis-a-vis* the billing practice must form the consideration.

3. The consumer with open eyes has entered into the agreement and solemnly undertaken to abide by the conditions regarding non-payment of interest. He cannot resile from the condition because there is nothing inherently objectionable about such a condition nor is such a condition *per se* illegal or void as opposed to public policy. It is not uncommon in commercial transaction, such a provision is entered into.

A The argument that the Board is monopolistic in character and therefore, the consumers have no other option but to enter into contract appears to be misconceived. The Board under Section 49 of the Supply Act is entitled, apart from framing uniform tariff, to insist upon such terms and conditions as the Board thinks fit. This has also been so stated in *Jagdamba case* (Supra). The consumption security deposit B whether or not it carries interest is a condition precedent for the supply of electric energy. We are clearly of the view that the scrutiny by the Court in determining the unconstitutionality of a provision not providing for interest must be tested on the following touchstone: –

C In imposing such a condition has the Board acted as a private trader and thereby shed off its public utility character? By referring to *Hindustan Zinc Ltd.* (supra) we have earlier pointed out the inter-relationship between Sections 49 and 59 as noted by this Court. We are therefore, of the view that in imposing such a condition the Board has not acted as a private trader. The nature of deposit has a rational D relationship to the object which is incorporated as a condition of supply.

Some of the learned counsel appearing for the consumers would draw our attention to Section 59 of the Supply Act as well. Under the E said section the Board is obligated to carry on its operation as to ensure that it generates a surplus of 3 per cent or as specified by the State Government. The Board is obligated to adjust its tariffs for ensuring such surplus. The condition of supply requiring a consumption security deposit has a direct bearing on the operations of the Board which are F to be conducted in such a manner as to ensure a surplus. The language in Section 59 of the Supply Act is "carry on its operations under this Act *and adjust its traiffs*." The language of the said section is not *by adjusting tariff*. Therefore, the argument that the only manner in which the Board can achieve a surplus is to adjust its tariffs does not flow from the language of Section 59. So read, in the context of the insistence of G a security deposit which has direct bearing on the operations of the Board is *per se* reasonable and constitutional.

We will assume, for a moment, that the contract is an adhesion contract. But still, it is not unconscionable.

H

In *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly* [1986] 3 SCC 156 at 208 "adhesion contract" is defined quoting Black's *Law Dictionary*, Fifth Edition, at page 38, as follows:

> "Adhesion contract. - Standardized contract form offered to consumers of goods and sevices on essentially 'take it or leave it' basis without affording consumer realistic' opprotunity to bargain and under such condition that consumer cannot obtain desired product or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms. Not every such contract is unconscionable."

With reference to these contracts the Court offered relief to the parties against such a clause if it is so unreasonable as to be unconscionable. As a matter of fact at page 211, paragraph 83 of *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly* [1986] 3 SCC 15 it stated thus:

> "Yet another theory which had made its emergance in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power. Lord Denning, MR, appears to have been the propounder, and parhaps the originator at least in England, of this theory. In *Gillespie Brothers & Co. Ltd.* v. *Roy Bowled Transport Ltd.* [1973] QB 400, 416 where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier from liability arising to the indemnified from his own negligence, Lord Denning said (at pages 415-416):
>
> The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they *to permit the party to enforce his unreasonable clause, even when it is so unreasonable,*

A *or applied so unreasonably, as to be unconscionable*? When it gets to this point, I would say, as I said many year ago:

'there is the vigilance of the common law which, while allowing freedom of contract, watches to see
B that it is not abused' : *John Lee & Son (Grantham) Ltd.* v. *Railway Executive* [1949] 2 All ER 581, 584.

It will not allow a party to exempt himself from his liability at common law when it would be quite
C unconscionable for him to do so. (emphasis supplied.)"

Farmsworth on Contracts, 2nd Edn. 319, 320 para 4.27 states:

D

"4.27 *Precursors of Unconscionability.* Courts of equity did not share the reluctance of common law courts to police bargains for substantive unfairness. Though mere "inadequacy of consideration" alone was not a ground for witholding equitable relief, a
E contract that was "inequitable" or "unconscionable" —one that was so unfair as to "shock the conscience of the court"—would not be enforced in equity. In one such case, a man promised to give a 20 percent interest in all property that he might later acquire in Alaska in
F return for the Promisee's payment of $1,000 and his cancellation of an $11,225 debt of questionable collectability. When the promisor acquired property worth over $ 750,000, the promisee sought specific Per ormance. The court refused to grant it. Though the fairness of the bargain was to be judged as of the time
G that the bargain was made, in equity as at common law, here the "inadequacy of consideration" for the promise sought to be enforced was "so gross as to render the contract unconscionable."

H In dealing with the validity of the agreement containing a clause

relating to minimum guarantee this Court had occasion to observed in *Bihar State Electricity Board* v. *Green Rubber Industries* [1990] 1 SCC 731 at page 740 as follows:

> "It is true that the agreement is in a standard form of contract. The standard clauses of this contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed: "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would arise a strong presumption." That their terms are fair and reasonable. *Schroeder (A.) Music Publishing Co. Ltd.* v. *Macaulay* [1974] 3 All ER 616, 624. in such contracts a standard form enables the supplier to say: "If you want these goods or services at all, these are the only terms on which they are available. Take it or leave it."It is a type of contract on which the conditions are fixed by one of the parties in advance and are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the pricise legal effect."

In the light of the above discussion, we hold that the clause not providing for interest is neither arbitrary nor palpably unreasonable, nor even unconscionable. In holding so we have regard to the following:

1. The consumer made the security deposit in consideration of the performance of his obligation for obtaining the service which is essential to him.

2. The electricity supply is made to the consumers on credit as has been noted above.

A 3. The billing time taken by the Board is to the advantage of the consumer.

4. Public revenues are blocked in generation, transmission and distribution of electricity for the purpose of supply. The Board pays interest on the loans borrowed by the Board. This is in order to perform B public service. On those payment made by the Board it gets no interest from the consumers.

5. The Board needs back its blocked money to carry out public sevice with reasonable recompense.

C

6. The Board is not essentially a commercial organisation to which the consumer has furnished the security to earn interest thereon.

We should also observe that the rate of interest on security deposit D cannot be equated with the rate of interest on the fixed deposit. First of all, if the consumption charges are to be appropriated the moneys accrued by way of deposits cannot be held in fixed deposits. Nor all deposits need carry interest in every transaction. Secondly, the nature and character of the security deposit is essentially different from fixed deposit. It is worthwhile, in this connection, to refer to Companies E (Acceptance of Deposits) Rules, 1975. In Rule 2 it is stated:-

> "2. Definitions. - In these Rules, unless the context otherwise requires.-
>
> F (a) ....
>
> (b) "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-
>
> G
>
> (i) ... .
>
> (ii) ....
>
> (iii) .... H

(iv) ... .

(v) any amount received from an employee of the company by way of security deposit;

(vi) any amount received by way of security or as an advance from any purchasing agent, selling agent, or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service;....."

We may add that merely because the English Acts provide for interest, it is not necessary the same should be adopted here as well.

Thus, we hold that the Division Bench of the Rajasthan High Court erred in striking down Condition No. 20 of the General Conditions of the Rajasthan Electricity Board as violative of Article 14 of the Constitution of India.

Has this Court decided the question of rate of interest in *Jagdamba Paper Industries (Pvt.) Ltd.* v. *Haryana State Electricity Board* [1983] 4 SCC 508? In that case the following two points were raised as seen from paragraph 3 at page 511:

1. The enahancement made in the security amount towards the meter is without any justification.

2. The enhancement of security deposit was not warranted.

On the question of interest in paragraph 11 at page 515 in *Jagdamba's* case (supra) it is stated thus:-

"On the security amount interest at the rate of 4 per cent was initially payable. The same has already been enhanced to 8 per cent per annum. Since the amount is held as security, we indicated to the counsel for the Board that security amount should bear the same

A interest as admissible on fixed deposits of Scheduled Banks for a term of years and we suggested keeping the present rate of interest in view that it should be enhanced to 10 per cent. Board's counsel has now agreed that steps would be taken to enhance the present rate of interest of 8 per cent to 10 per cent with
B effect from October 1, 1983."

It requires to be carefully noted that the question of interest on security was not raised before the Court. Therefore, the Court had no occasion to decide this issue of interest. That part of the judgment, as
C rightly contended by Mr. Soli J. Sorabeejee, learned counsel, is *sub-silentio*. However, the learned counsel for the consumers pressed into service the various orders passed by this Court in relation to interest and urged that it is concluded by those orders. We are unable to accept this argument. All the orders have their root in Interlocutory Applica-
D tion No. 1 of 1989 in Writ petition No. 578 of 1987. That order is extracted in full:

"We have heard counsel for the parties. Mr. Gopal Subramaniam, counsel for the State Electricity Board on instructions states that the initial deposit which has
E been made by the consumer petitioner, to the tune of Rs. 10,07,378.81 was intended as security for payment of energy dues. In terms of our order of *5th May, 1988*, the petitioner would be entitled to the interest on that amount from the date of the deposit at the rate of
F 12% per annum. Mr. Gobind Mukhoty, counsel for the petitioner now agrees to deposit the balance amount of Rs. 6,91,621 minus the interest which is said to be the additional security and while making the deposit of the additional amount, the petitioner is entitled to deduct the interest already accrued on the deposit of
G Rs. 10,07,378.81 from the date of the deposit at the rate of 12% per annum. The balance amount after deduction of the interest shall be deposited in two equal quarterly instalments, the first being due by 15.10.89.

H

The application for directions is disposed of accordingly." A

Based on this, in Writ Petition No. 613 of 1990 it was stated thus:

"In view of the order made by this Court in the connected matters on September 7, 1989, after hearing parties in Writ Petition No. 578/87 on the amount deposited by the consumer as security, interest at the rate of 12% would be admissible. B

The Writ petition is disposed of accordingly." C

Two other orders remain to be seen. One rendered in W.P. 5582 of 1989 which was disposed of by consent and the other in W.P.No. 576 of 1990 where the writ petition was disposed of in the following manner: D

"If the Electricity Board has been directed to allow interest at the rate of 12% per annum on the security deposited with the Board by the petitioners similarly situated, the claims of the petitioners should similarly be dealt with by the Board. The Writ Petition is disposed of." E

On careful examination of the above orders, we do not think the Court ever intended to adjudicate upon the rate of interest or render a decision on that question. Therefore, it cannot be contended that the disposal of Writ Petition No. 613 of 1990, though by a Bench of 3 judges would be binding on us because, as pointed out above. It was entirely based on Interlocutory order. We are of the view that we are free to decide the question on its merits. F G

The argument of Mr. Anil Divan, learned counsel that unequals are treated equals has no basis. It may be that the consumers of electricity, where it is raw material, would be prompt in their payment in their own interest. On that basis, it cannot be contended that they H

A cannot be treated in the same way as defaulters. The test, in our considered opinion, is whether in the general application of law there is any discrimination. Merely because some of the consumers are prompt those related cases cannot render the provision constitutional. We may usefully refer to the following cases:

B *The Collector of Customs, Madras* v. *Nathella* [1962] 3 SCR 786 at 829-30 it was observed?

> "The deleterious effects of smuggling, as pointed out in the extract from the Report, are real and it is not in
C dispute that the prevention and eradication of smuggling is a proper and legally attainable objective and that this is sought to be achieved by the relevant law. If therefore for the purpose of achieving th desired objective and to ensure that the intentions of Parliament shall not be defeated a law is enacted which
D operates somewhat harshly on a small section of the public, taken in conjunction with the position that without a law in that form and with that amplitude smuggling might not be possible of being effectively checked, the question arises whether the law could be
E held to be violative of the freedom guaranteed by Art. 19 (1) (f) & (g) as imposing an unreasonable restrain. That the restrictions are in the "interest of the general public" is beyond controversy."

F *In Vivian Joseph* v. *Municipal Corporation, Bombay*, [1972] 2 SCR 257 at 276-77 it was observed:

> "The levy of the cess under s. 27 of the Act is not based on the principle of *quid pro quo*. Its object is not to repair all residential premises, but to preserve and
G prolong their lives in order to avert the dilema caused by the acute shortage of residential accommodation on the one hand, and the reluctance and/or inability of the owners to carry out repairs resulting from the Rent Act, on the other and to establish an agency so that
H structural repairs to buildings in dangerous or ruinous

conditions can be carried out. The finances for these objects are provided from a fund from the impugned cess and contributions by the State and the Corporation. A

The contention that some of the buildings falling in categories B and C would not need structural repairs throughout the life of the Act or that such repairs would carried out in buildings not cared for by defaulting landlords, takes no notice of the fact that the primary object of the Act is not to repair all buildings subject to cess but to prevent the annually recurrent mischief of house collapes and the human tragedy and deprivations they cause. The cess being thus levied to prevent such disasters, there is no question of unequal treatment between one class of owners and another. The classification of buildings into three categories is based, as already stated, on their age and the construction current during the periods of their erection. It is,therefore, based on an intelligible differentia and is closely related to the objects of the legislation. There is, therefore no question of unequals being treated as equals, as each building of the Board and has to be structurally repaired if the need were to arise." B C D E

In *B. Banerjee* v. *Anita Pan,* [1975] 2 SCR 774 at 787-88 it was observed:

F

"Moreover, what is the evil corrected by the Amendment Act? The influx of a transferee class of evictors of tenants and institution of litigation to eject and rack-rent or re-build to make larger profits. Apparently, the inflow of such suits must have been swelling slowly over the years and when the stream became a flood the Legislature rushed with an amending bill. Had it made the law merely prospective these who had in numbers, already gone to Court and induced legislative intention would have escaped the inhibition. This would defeat the object and so the application of G H

A the additional than to pending actions could not be called unreasonable. To omit to do so would have been unreasonable folly. The question is whether those cases which were filed several years ago should have been carved out of the category of transferees hit by the act? Where do you draw the line? When did the
B evil assume proportions? These are best left to legislative wisdom and not court's commensense although there may be grievances for some innocent transferees.

C If this be the paradigm of judicial review of constitutionality, we have to ignore exceptional cases which suffer misfortune unwittingly. The law is made for the bulk of the community to produce social justice and isolated instances of unintended injury are inevitable martyre for the common good since God Himself has
D failed to make perfect laws and perfect justice, Freaks have to be accepted by the victims rightly or wrongly as froensic fate!"

In *Fatehchand Himmatlal* v. *State of Maharashtra,* [1977] 2 SCR
E 828 at 851 it was observed:

"May be, some stray money-lenders may be good souls and to stigmatize the lovely and unlovely is simplistic betise. But the legislature cannot easily
F make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations. So viewed pragmatics overrule punctilious and unconscionable money-lenders fall into a defined group. Nor have the creditors placed material before the Court to contradict the presumption which must be
G made in favour of the legislative judgment. After all, the law-makers representatives of the people, are expected to know the socio-economic conditions and customers. Since nice distinctions to suit every kindly creditor is beyond the law-making process, we have to
H uphold the grouping as reasonable and the restrictions as justified in the circumstances of the case. In this

branch, there are no finalities." A

The attack on additional consumer deposit is that no reasons have been adduced for additional demand. It stands to reason that if there is a revision in the rate of tariff there must be an upward revision in the consumption security deposit since it has direct bearing to the level of supply in consumption of electricity. For example,in the State of Uttar Pradesh, the tariffs were adjusted upwards in October 1986. The revision in the form of an additional security deposit with interest at the rate of 3 per cent was made in January 1987. These facts indicate the rationale in the demand of additional security deposit. As stated above, this being a condition of supply, no reason need be given at the time of upward revision. Therefore, we reject the argument of Mr. Govind Mukhoty, learned counsel in this regard. B C

In view of the above finding, upholding the clause relating to non-payment of interest, for example, Rajasthan and Orissa, what is to happen to such of those cases where interest is provided like Andhra Pradesh, Utter Pradesh and Bihar? In all those cases wherever the electricity boards have framed a provision for payment of interest after adjusting its finances at a stated rate they cannot be allowed to delete such a clause. The provision for interest has been made by the various Boards having regard to the overall budgetary and financial position. Further, keeping in view the quantum and made of security deposit and billing and recovery practice. Nor again, could the Board withold payment of interest on the basis of this judgment. However, if there is any change in the circumstances affecting the budgetary and finacial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case. D E F

We also add that notwithstanding *Jagdamba's* case (supra) as on today, Haryana Electriciry Board has dispensed with payment of interest. We make it clear by this judgment that we are not deciding the validity of such provision since the matter is stated to be pending. G

Inconclusion, we hold: H

A (1) Section, 49 of the Supply Act is valid.

(2) The nature of consumption deposit is to secure prompt payment and is intended for appropriation.

B (3) There is no liability on the Electricity Board either under the statute or common law or equity to pay interest.

(4) Conditions and the terms of supply providing for non-payment of interest is not so unconscionable as to shock the conscience of the Court.

C

(5) No reason need be given for enhancement of additional security deposit.

Accordingly we uphold the judgment of Andhra Pradesh High D Court and reverse the judgment of Rajasthan High Court.

In the result, the following cased filed against Andhra Pradesh Electricity Board are dismissed:

E S.L.P. (c) Nos. 13004/89, 14995/89, 14629/89, 14899/89, 15739/89, 15817/89, 7475/90, 6374/90, 9661-65/90, 5461/90, 6371/90, 5294/90, 6779/90, 5492/90, 5921/90, 5559/90, 4793-94/90, 4791-91/90, 6375/90, 6570/90, 12270/90, 9926/90, 11548/90, 2600/90, 6372-73/90, 6035-44/90, 6505/90, 6374/90, 6094/90, 6765-68/90, 6462/90, 5306-08/90, 9132/90, 12424/90, 6370/90, C.A. No. 1779/90, S.L.P. F (c) Nos. 17465/91, 17679/91, 17865-66/91, 20125/91, 19532/91, 18043/91, 19586-93/91, 19597-600, 20076/91, 21/92, 649/92, 2564/92, 5782-83/92, 8336/92, 9124-25/92, 9488/92, 12318/92, 12506/92, 12610/92, 12805/92, 12804/92, 12814/92, 14439/92, 14449/92, 14555/92, 1739-43&43A/92, 13593/92, C.A. No. 2409/92, W.P. (c) G Nos. 603/92, 455/92, 3558/83, 566/92, 1353/89, 48/92, 362/92, 1293/89, 6770/90.

The Transfer Petition (c) No. 366/92 filed by the Andhra Pradesh Electricity Board is allowed.

H

The following cases filed by Rajasthan State Electricity Board are allowed: A

C.A. Nos. 4714/91 & 4928-43/91, SLP (c) Nos. 446/92, 703/92, 12941/90, 433-36/92, 439-42/92, C.A. Nos. 5342/92, 1187-88/92, 4512/92, 4510/92, 4511/92, 2800/92, 1204/92, 406-436/92, S.L.P. (c) No. 20/92, 46/92, 47/92, 50/92, 53/92, 449-452/92, 494/92, 516/92, 48/92, 49/92, 51/92, 52/92, 54/92, 55/92, 43-45/92, 56-72/92, 428-432/92, 443-444/92, 453-457/92, 503-08/92, 512-14/92, 530-33/92, 14450/92. B

The following cases filed by the Bihar Electricity Board are allowed: C

SLP(c) Nos. 11799/89, 1856/90, 8318/92, 16028/92.

The following cases against Uttar Pradesh Electricity Board are dismissed. D

W.P. (c) Nos. 513/87, 804/87, 1144/87, 743/87, 531/87, 725/87, 739/87, 526/91, 576/87, 577/87, 801/87, 833/87, 769/87, 676/87, 578/87, 728/87, 762/87, 818/87, 526/87, 744/87, 742/87, 540/87, 1238/87, 738/87, 684/87, S.L.P. (c) Nos. 2952-56/1987, 15885/91, & 12902/91. E

The W.P. (c) No. 1317/90 filed against Punjab Electricity Board is dismissed.

All the I.A.s are allowed. F

However, there shall be no order as to costs.

T.N.A. Petitions disposed of.

G