

WEST BENGAL STATE ELECTRICITY BOARD

v.

M/S FAKIR CHAND RICE MILLS AND ORS.

FEBRUARY 27, 1996

[K. RAMASWAMY, S. SAGHIR AHAMAD AND  
G.B. PATTANAIK, JJ.]

*Electricity—Consumer—Pilferage—Demand of Rs. 28, 68, 264.06 from consumer—Suit by consumer for supply of electricity—Direction by trial to consumer to deposit Rs. 2,60,000—High Court—Modification of order and direction to deposit Rs. 5,60,000—Validity of direction by High Court—Held normally in matters of money claim at least half of amount would be directed to be deposited—In this case Board is obligated to supply electrical energy—Consumer is also under obligation to pay amount subject to determination of controversy in suit—Consumer directed to deposit Rs. 12 lakhs.*

*Court—Power to pass discretionary order—Should be exercised properly.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4720 of 1996.

From the Judgment and Order dated 24.11.95 of the Calcutta High Court in C.O. No. 2714 of 1995.

V.B. Reddy Additional Solicitor General, H.K. Puri, Rajesh Srivastava and S.P. Lenka, for the Appellant.

Sivaji Sen, Bar-at-Law, S.C. Ghosh and A.D. Sikri for the Respondents.

The following Order of the Court was delivered :

Mr. A.D. Sikri, Learned counsel accepts notice on behalf of the respondents. We have heard the counsel for the parties.

Leave granted.

As rightly pointed out by the counsel for the respondents, it is a discretionary order. The discretion would also be properly exercised by the

courts below when dealing with the points in controversy. A demand of Rs. 28, 68, 264.06 was made on the allegation that there were pilferages in the meter reading of the electrical energy supplied to the respondents. In a suit by the respondents for supply of energy to the respondents, the trial Court directed payment of Rs. 2,60,000 and odd. On appeal, it was confirmed. When it was carried in revision, the High Court in C.O. No 2714 1995 modified the order and directed the respondents to deposit a sum of Rs. 5,60,000. Thus this appeal by special leave.

A demand notice for Rs. 28 lakhs and odd having been issued, the question is : whether the Court was right in directing ultimately payment of Rs. 5,60,000 ? The High Court does not appear to have addressed itself to the questions. It simply repeated that it was a discretionary order passed by the courts below directing payment of Rs. 2.60 lakhs and at the same time directed the respondents to deposit Rs. 5,60,000 without adjudicating the matter. Normally, in matters of money claim, at least half of the amount would be directed to be deposited. In the situation obtaining in this case, when the appellant is obligated to supply electrical energy to the respondents an equal obligation has to be cast on the respondents to pay the amount subject to determination of controversy in the suit. Under these circumstances, the respondents are directed to deposit a sum of Rs. 12 lakhs within a period of two months from today. If the amount of Rs. 5,60,000 has already been deposited, the same may be given credit for the payment and the balance be paid within the aforesaid period.

The appeal is accordingly disposed of. No costs.

Appeal disposed of.