

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.21957 of 2012

Dated 09.09.2015

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Between:

Voona Kameswara Rao

... Petitioner

and

-

AP Eastern Power Distribution Corporation Ltd.,

rep. by its Chief Managing Director,
Visakhapatnam and 5 others

...Respondents

Counsel for the petitioner: Mr.Mavidi Rama Rao

Counsel for the respondents: Mr.M.Ravindra, SC for APEPDCL

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to set aside letter No.AAO/ERO/KSB/JAO/D.No.722/12, dated 19-05-2012, of

respondent No.6, whereunder he has demanded a sum of Rs.10,89,459/-, as outstanding in respect of the petitioner's service connection bearing No.720, pending appeal before respondent No.2.

The petitioner is a consumer of the respondents. Based on an inspection of the aforesaid service connection made on 13.11.2003, by the Assistant Engineer, DPE-II, Vizianagaram, respondent No.5 made a provisional assessment on the ground that the petitioner indulged in tampering of meter seal and thereby, suppressed the actual consumption being recorded by the meter. After the petitioner has submitted his objections, respondent No.3 has passed an order *vide* proceeding No.SAT.10351/SKL/D.TKL/PLA/PF-791/Dno.2949, dated 25-02-2005, purported to be the final assessment order, for a sum of Rs.5,07,357/-. Assailing this order, the petitioner has filed an Appeal before respondent No.2- Chief General Manager. Pending the Appeal, respondent No.6 has issued the impugned proceeding demanding a sum of Rs.10,89,459/- as the outstanding amount.

On 18-09-2012, this Court, while admitting the Writ Petition, passed the following interim order:

"This is an application to direct the respondents not to disconnect the power supply to the petitioner's rice mill bearing service connection No.720, Brahmana Tarla Palasa Section, Srikakulam District, by suspending proceedings in Lr.No.AAO/ERO/KSB/JAO/O/D.No722, dated 19-5-2012 of respondent No.6.

At the hearing, Sri Mavidi Rama Rao, learned counsel for the petitioner, submitted that by Judgment dated 4-10-2006, the learned Special Judge for trial of cases under the Indian Electricity Act-cum-I Additional District & Sessions Judge, Srikakulam, has acquitted the petitioner of the criminal case registered for the offence under Sections 135 and 138 of the Indian

Electricity Act, 2003.

Since the petitioner was acquitted by the Special court, I am of the prima facie opinion that the provisional assessment is no longer enforceable as it is eventually the Special Court which is also empowered to fix the petitioner's civil liability under Section 154(5) of the said Act. Having taken a view in the criminal case, there is no possibility of the Special Court taking a different view while examining the petitioner's civil liability. At any rate, no efforts were made by the respondents to get the petitioner's civil liability fixed while prosecuting him for the offence.

In the light of these facts, the respondents are restrained from disconnecting the power supply to the service connection of the petitioner's rice mill for non-payment of the amount demanded under the impugned letter of respondent No.6, pending further orders.”

Section 135 of the Electricity Act, 2003 (for short 'the Act') defines 'Theft of Electricity'. Under Clause (b) of Sub-Section (1) thereof, tampering of meter constitutes theft. Under Sub-Section (5) of Section 154 of the Act, the Special Court shall determine the civil liability against the consumer in terms of money for Theft of Energy.

In the instant case, the respondents, instead of referring the petitioner's liability to the special Court under the above-mentioned provisions, have embarked upon making a final assessment contrary to the scheme of the Act envisaged under Section 154 (5). The impugned notice was issued in pursuance of the said final assessment order made by respondent No.3, who has no jurisdiction to make the same. Moreover, the petitioner has already been acquitted by the competent Criminal Court. In these facts and circumstances of the case, the impugned demand cannot be sustained and the same is, accordingly, quashed. However, the respondents are left free to refer the petitioner's civil liability to the special

Court under Section 154 (5) of the Act and demand money, in the event the special Court imposes civil Liability on the petitioner.

Subject to the liberty given to the respondents as above, the Writ Petition is allowed. It is made clear that any amount that has been paid by the petitioner, otherwise than in accordance with the order of this Court, shall be subject to the civil liability that shall be determined by the special Court.

As a sequel, WVMP.No.3723 of 2012 and WPMP.No.28141 of 2012, filed by the petitioner for interim relief, are disposed of as infructuous..

(C.V.Nagarjuna Reddy, J)

Dt: 9th September, 2015

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