

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.13376 OF 2012

DATED:16-7-2015

Between:

M/s. Meenakshi Infrastructure Pvt. Ltd.,
Survey No.39, Kondapur, Gachibowli
Hyderabad, rep. by its Managing Director
C. Shivaram Prasad

... Petitioner

And

A.P. Central Power Distribution Co. Ltd.
Rep. by its Managing Director
Mint Compound, Hyderabad
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. M.R.S. Srinivas

COUNSEL FOR THE RESPONDENTS: Mr. R. Vinod Reddy,
Standing Counsel for
TSCPDCL

THE COURT MADE THE FOLLOWING:

ORDER:

This writ petition is filed for a mandamus to declare the action of the respondents in demanding the petitioner company to pay Rs.14,42,203-50 ps. towards proposed assessment for the back-billing, in letter No.ADE/OP/GCB/HT/D.No.2912 dt.16.12.2011, as illegal and arbitrary.

I have heard Mr. M.R.S. Srinivas, learned counsel for the petitioner, and Mr. R. Vinod Reddy, learned Standing Counsel for the Telangana State Central Power Distribution Company Limited (TSCPDCL).

Before proceeding further, it needs to be pointed out that TSCPDCL has become successor of respondent No.1 power distribution company and respondent Nos.2 and 3 have become functionaries of respondent No.1. Mr. R. Vinod Reddy, in his fairness has not insisted for formal amendment of the cause title and has appeared for the successor entity and its functionaries, who are shown as respondent Nos.2 and 3.

The petitioner has entered into an agreement with the respondents for receiving high tension power for a contracted maximum demand of 300 KVA on 11.6.2007. Clause 1 of the HT Agreement reads as under:

1. "SUPPLY OF POWER:

We the above mentioned have requested the CPDC of A.P. Ltd., to supply electricity at specified voltage of supply as per tariffs for the purpose of CONSTRUCTION (Cat-II) and the CENTRAL POWER DISTRIBUTION COMPANY OF A.P. LIMITED agreed to afford such supply on the terms and conditions notified by them from time to time under section 49 of the Electricity (Supply) Act, 1948 and those hereinafter mentioned."

Under Clause 6, the Period of Agreement is five years. Under Clause

7, liberty is given to the petitioner to terminate the agreement by giving three months notice expressing such intention at any time after the period of two years. The respondents are also entitled to terminate the agreement by giving one week's notice if the petitioner violates the terms of the agreement or the terms and conditions of supply. Thus, as per this agreement, the period of five years expired only on 11.6.2012.

On 9.12.2011 the petitioner's service was inspected by one Balu, ADE/DPE/IIHYN, and it was found that the petitioner was utilizing supply for the purpose of construction only. Applying Memo dt.29.10.2011 the Inspecting Officer opined that the power supply being utilized by the petitioner falls under HT temporary supply category and accordingly back-billing was proposed. Respondent No.3 has therefore provisionally assessed a sum of Rs.28,84,407/- as electricity charges as per clause 7.5.1 of general terms and conditions of supply and the petitioner was required to pay 50% of the said amount, if it wishes to continue supply, within seven days.

Feeling aggrieved by this order, the petitioner filed this writ petition.

This Court, by order dt.2.5.2012, granted an interim direction not to disconnect the power supply subject to the petitioner depositing Rs.5.00 lakhs.

No counter affidavit is filed.

As noted hereinbefore, the specific purpose for which the petitioner has received supply under HT Agreement on 11.6.2007 was 'construction'. It is clearly mentioned in Clause 1 of the agreement reproduced above, that the service falls under 'Construction' (within category-II). It is not in dispute that the petitioner had been paying electricity charges as per the prescribed tariff under the said category. From the impugned provisional assessment proceedings, it appears that Memo No.CGM(Commercial)/SE/BPE/ADE(T)D.No.1340/11, dt. 29.10.2011 was relied upon for proposing back-billing. In my opinion, if, after the agreement was entered into, the respondents have created

a separate category in respect of consumers receiving power supply for construction, they cannot apply the same retrospectively. At the most the respondents may try to justify levy of tariff prospectively. Under Clause 9 of the Agreement the respondents have reserved their rights to vary, from time to time, tariffs, scale of general and miscellaneous charges unilaterally. In any case, the petitioner will not be liable to pay higher charges till the time the new category is created. As the proceedings impugned in the writ petition are only in the nature of provisional assessment, respondent No.2 has to make a final assessment.

Hence, respondent No.2 is directed to make a final assessment after giving notice to the petitioner. The petitioner is entitled to raise all legally permissible grounds to such notice. Till final assessment proceedings are concluded, the respondents shall not disconnect the power supply for non-payment of the balance amount under the impugned provisional assessment notice.

Subject to the above directions, the writ petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P. No.16669 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

16-7-2015

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