

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

+ Writ Petition No.28392 of 2011

+ DT.23.07.2015

M/s.Sri Devi Associates

...Petitioner

Vs.

\$ The Assistant Divisional Engineer (Operation), APEPDCL, Sub-division, Seethammadhara, Visakhapatnam and others

... Respondents

^ Counsel for the Petitioner: Smt.N(P).Anjana Devi

! Counsel for the respondents: Sri M.Ravindra

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> Head note:

? Cases referred:

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

Writ Petition No.28392 of 2011

Dated 23rd July, 2015

Between:

M/s.Sri Devi Associates

...Petitioner

And

The Assistant Divisional Engineer (Operation), APEPDCL, Sub-division, Seethammadhara, Visakhapatnam and others

...Respondents

Counsel for the petitioner: Smt.N(P).Anjana Devi

Counsel for the respondents: Sri M.Ravindra

The Court made the following:

ORDER:

This writ petition is filed assailing the final assessment order of respondent No.2, as confirmed by respondent No.3, under Section 126 of the Electricity Act, 2003 (for short 'the Act').

The facts are not in dispute. The petitioner is a consumer of electricity supplied by the A.P.Eastern Power Distribution Company Limited. It is using the electricity for commercial activity, namely, for running a function hall. The petitioner's service connection was inspected by the Assistant Divisional Engineer/DEP-2, Visakhapatnam on 30.12.2010, during which, it was found that the petitioner was collecting Rs.8/- per unit + services charges at the rate of 10.3% from its customers as against Rs.5.40 ps being levied by the respondents. Based on this finding, respondent No.1 has provisionally assessed Rs.8,41,652/- as the loss of energy for the alleged unauthorized use of electricity.

In reply to the show-cause notice, the petitioner has denied unauthorized use of electricity. It has sought to justify collection of higher amount than the rate at which the respondents supplied power to the petitioner on various grounds, reference to which is not necessary. The fact, however, remains that the petitioner has specifically pleaded that the act complained of by the respondents does not fall within the provisions of Section 126 of the Act. However, rejecting these objections, respondent No.2 has passed final assessment order on 30.04.2011 for a sum of Rs.7,88,177/-. Feeling aggrieved by the same, the petitioner has filed an appeal before respondent No.3, who by his order, dated 13.09.2011, has confirmed

the order of respondent No.2. Assailing these orders, the petitioner has filed this writ petition.

The only contention raised by Smt.N(P).Anjana Devi, learned counsel for the petitioner, in this writ petition is that collection of higher amount by her client from its customers towards electricity charges than the amount at which the respondents have supplied power to it does not amount to unauthorized use of electricity within the meaning of Section 126 of the Act.

Opposing this submission, Sri M.Ravindra, learned Standing Counsel for the respondents, has submitted that as per Appendix-III of the General Terms and Conditions of Supply approved by the A.P.Electricity Regulatory Commission, re-sale of energy without the permission of the company constitutes unauthorized use of electricity and that therefore, the act indulged in by the petitioner falls under Section 126 of the Act.

I have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

Section 126 of the Act deals with assessment for unauthorized use of electricity. Clause-(b) of Explanation to Section of 126 of the Act defines unauthorized use of electricity as:

“unauthorised use of electricity’ means the usage of electricity

—

- (i) by any artificial means; or
- (ii) by a means not authorised by the concerned person or authority or licensee; or
- (iii) through a tampered meter; or
- (iv) for the purpose other than for which the usage of electricity was authorised; or
- (v) for the premises or areas other than those for which the supply of electricity was authorised.”

The learned Standing Counsel submitted that collecting higher amount from the petitioner’s customers falls under sub-clauses (ii) and (iv) of Clause (b) of the Explanation to Section 126 of the Act.

On a careful consideration of this submission, I do not find any merit in the same. Sub-clause (ii) deals with usage of electricity by

means not authorized by the person or authority or licensee. In my opinion, this Clause prohibits usage of electricity by a means different from which the consumer is authorized to use. There is nothing in this Clause which either expressly or by implication prohibits commercial category consumers from collecting higher rates than the price at which the electricity is purchased by them from their customers on usage of such electricity. On a proper understanding of the word 'means', I think it covers the technical manner in which the electricity is to be received. This view of mine derives support from sub-clause (i) which deployed the words "by any artificial means". From a reading of both these Clauses, there could be no doubt that the word 'means' is used to connote the manner of receiving supply through metering and other equipment prescribed by licensee and it does not cover the purpose for which the power is utilised. Indeed, Clause-IV deals with the purpose for which the power is used.

Coming to sub-clause (iv), usage of electricity for the purpose other than for which it is authorised constitutes malpractice. Appendix-III of the General Terms and Conditions of Supply contains a check list for conducting LT inspections. Serial No.16 reads as "whether the Consumer is indulging in re-sale of energy without the permission of the Company or Licence/Exemption". The sole premise on which the respondents have initiated assessment proceedings against the petitioner is that collecting higher price by the petitioner from its customers amounts to re-sale of energy and thereby the petitioner violated sub-clause (iv) of Clause (b) of Explanation to Section 126 of the Act. A perusal of Appendix-III shows that it applies to LT consumers and not to HT consumers, such as, the petitioner.

Be that as it may, re-sale of energy pre supposes the consumer supplying electricity to another person through a separate means to the latter's premises. In this case, the very purpose for which supply is received by the petitioner is to make it available for its customers who use its function hall. Therefore, by no means, it can be said that

collecting higher charges from its customers by the petitioner on the use of electricity by them in course of using the function hall amounts to re-sale of energy.

Under the above circumstances, I am of the opinion that the very initiation of assessment proceedings under Section 126 of the Act by treating the alleged act of collecting higher amounts than at the rate at which the electricity is supplied to the petitioner as amounting to unauthorized use of electricity cannot be sustained and the final assessment order of respondent No.2 as confirmed by respondent No.3 in the appeal are accordingly set aside.

Before parting with this case, it needs to be observed that if the respondents seek to prevent the function halls from collecting higher rates, they can approach the Electricity Regulatory Commission for framing appropriate condition prohibiting collection of higher charges.

For the above-mentioned reasons, the writ petition is allowed. The respondents are directed to adjust the amounts paid by the petitioner towards part of the impugned assessment, in the future bills.

As a sequel to disposal of the writ petition, W.P.M.P.No.35061 of 2011 and W.V.M.P.No.4313 of 2011 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

23rd July, 2015

Note: LR copies to be marked.

(b/o)

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