

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.40476 of 2012

Date:26.8.2015

Between:

Burugupalli Timma Raju,
S/o Late Sriramulu

..... **Petitioner**

And:

The Eastern Power Distribution Company
of A.P. Ltd., Visakhapatnam, repled., by its
Chairman and Executive Director
and two others.

.....**Respondents**

Counsel for the Petitioner: None appeared.

Counsel for the Respondents: Mr. M.Ravindra

Standing Counsel for APEPDCL

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to set aside letter No.ADE/O/PDT/F.Doc.No.1094/11-12/D.No.2140/ 12, dated 24.9.2012, of respondent No.3 and proceedings No. DE/O/Zone-III/Vsp/Coml/BBF/D.No.3019/12, dated 05.10.2012, of respondent No.2.

At the hearing, there is no representation for the petitioner.

I have heard Mr. M.Ravindra, learned Standing Counsel for the Eastern Power Distribution Company of Andhra Pradesh Limited and perused the record.

The petitioner is a L.T. Category-III consumer with Service Connection No.218/1, running a poultry farm. The petitioner's service was inspected on 06.9.2012 by the

Assistant Divisional Engineer, Detection of Pilferage of Energy, HT, VSP (for short 'ADE, DPE'). The main incriminating point observed during the inspection, as per the report of the ADE, DPE, was that on review of the consumption pattern and detailed verification of the billing data, it is revealed that the billing was done by applying the Multiplying Factor (MF) of '1' instead of '2'. Based on the said inspection report, a provisional assessment was made by respondent No.3 on 24.9.2012. Subsequently, respondent No.2 has passed final assessment order on 05.10.2012, confirming the provisional assessment.

As regards the correct MF to be applied, the petitioner has not made out any case either before respondent Nos.2 and 3 or before this Court to interfere with the finding of the said respondents that the correct MF is '2' and not '1' and that the said mistake was noticed during the inspection on 06.9.2012.

However, the issue that needs to be considered in this Writ Petition is whether the demand made by the respondents with effect from 14.7.2008, on which date the present meter was installed, is in conformity with the provisions of the Electricity Act, 2003 (for short 'the Act').

The answer to this issue lies in Section-56(2) of the Act, which reads as under:

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The above reproduced provision contains a prohibition on recovery of any amount due for a period of more than two years from the date when such sum

became first due, unless such sum is continuously shown as recoverable as arrear of charges for electricity supplied.

Undisputedly, the respondents have noticed the mistake for the first time on 06.9.2012. Though the shortfall in the consumption charges have fallen due from 14.7.2008, on which date the meter was installed, the respondents cannot recover any money for a period beyond two years preceding the date of inspection, i.e., 06.9.2012, as, admittedly, in the bills issued by the respondents to the petitioner, the provisional amount was not and indeed could not be shown as arrear of charges for electricity supply as, the mistake in adopting the MF was detected only on 06.9.2012. Therefore, in view of the legislative injunction contained in Section-56(2) of the Act, the maximum period for which the respondents can recover the unbilled shortfall consumption charges was from 06.9.2010.

The Writ Petition is partly allowed to the extent indicated above. Consequent to allowing of the Writ Petition, the order of respondent No.2 is set aside to the extent of assessment relating to the period between 14.7.2008 and 06.9.2010.

As a sequel to disposal of the Writ Petition, WPMP.No.51329 of 2012 is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*26th August 2015
DR*