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

WRIT PETITION No.15070 of 2011

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04.06.2015

Between:

M/s.Sree Setharamanjaneya Rice Mill (SC01), Tallapudi

…**Petitioner**

And

The Assistant Accounts Officer,

Electricity Revenue Office, Nidadavole and another

…**Respondents**

Counsel for the petitioner: Mr.K.V.Upendra Gupta

Counsel for respondents: Mr.P.Anand Seshu,

standing counsel for APEPDCL

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside letter, dated 10.05.2011, of respondent No.1, whereunder he has demanded a sum of Rs.3,189/- towards purported distribution transformer loss for the period from April, 2007 to January, 2009.

Mr.K.V.Upendra Gupata, learned counsel for the petitioner, submitted that the impugned demand is contrary to the provisions of Section 56(2) of the Electricity Act, 2003 (for short 'the Act') as the respondents are seeking to recover the arrears beyond the period of limitation of two years prescribed under the said provision.

Mr.P.Anand Seshu, learned standing counsel for A.P.E.P.D.C.L. for the respondents, submitted that the petitioner, who is an LT consumer, availed load in excess of maximum load permissible for LT consumers and that the audit team during the inspection found that the respondents have not recovered the distribution transformer loss at 3% as per the extant terms and conditions, and as a consequence of the audit objections, the impugned letter/notice was issued. He further submitted that the charges, which are now demanded, are not the regular consumption charges or that payable for pilferage or malpractice and that as the liability of the petitioner was pointed out by the audit party at a subsequent stage, they have raised the demand and that therefore, the same does not fall within the provisions of Section 56(2) of the Act.

I have carefully considered the submissions of the learned counsel for both the parties.

Section 56 of the Act reads as under:

> "56. Disconnection of supply in default of payment:- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:
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> Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-
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> a. an amount equal to the sum claimed from him, or
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> b. the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
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> whichever is less, pending disposal of any dispute between him and the licensee.
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> (2) 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."

Sub-Section (1) of Section 56 of the Act empowers the licensee to disconnect the power supply if the consumer neglects to pay any charge for electricity or any sum due other than a charge for electricity due from him to a licensee in respect of supply, transmission, distribution or wheeling of electricity to him. The phrase 'any charge for electricity or any sum other than a charge for electricity due' is referable to the supply, transmission, distribution or wheeling of electricity. Sub-Section (2) of Section 56 of the Act, however, limits the power of the licensee to recover such sums up to 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. A conjoint reading of Sub-Sections (1) and (2) of Section 56 of the Act would leave one in no doubt that Section 56 deals with any charge for electricity due from the consumers payable in connection with the supply, transmission, distribution or wheeling of electricity. Therefore, the provision does not make any distinction based on the nature of charges payable by the consumer. In other words, whether the charges payable by the consumers are regular electricity charges or otherwise, for non-payment of such charges, the licensee is empowered to disconnect the power supply. Equally, the limitation on this power of the licensee to recover such charges and disconnect the power supply is clearly envisaged in Sub-Section (2) of Section 56 of the Act. If the licensee is empowered to disconnect the power supply for non-payment of any charge for electricity under Sub-Section (1) of Section 56 of the Act, equally, a clear embargo is placed on the licensee for recovery and disconnection of power supply with reference to such charge, if the same is not recovered within two years from the date when such sum became first due. Under this provision, however, an exception is made that if such sums are continuously shown as due and recoverable as arrear of charges, the limitation of two years has no application.

Sub-Section (2) of Section 56 of the Act is evidently envisaged to prevent the licensee from making stale claims. Legislature has expected the licensee to be vigilant in demanding its charges, so that the consumers will not be placed with undue burden by the licensees by coming out with sudden demands after expiry of a certain period. This being the legislative object, the respondents were expected to have been circumspect in detecting the liability of the petitioner for payment of the purported distribution transformer charges. Unfortunately, for them, by the time they have realized that the petitioner was liable to pay such charges, the period of two years from the date such sum became first due had expired. It is not in dispute that even in respect of the amount which fell due in January, 2009, more than two years had expired by the time the impugned demand was made. Therefore, no part of the demanded amount remained within the period of two years from the date it fell due and consequently, the same is not recoverable.

At the hearing, learned standing counsel for A.P.E.P.D.C.L. for the respondents submitted that the petitioner had paid Rs.3,189/- and it has to pay Rs.32,026/- towards penal charges for the delayed payment. In my opinion, when the petitioner is not liable to pay the principal liability of Rs.3,189/-, the question of it being liable to pay the penal charges does not arise.

For the above reasons, the Writ Petition is allowed.

As a sequel to allowing the writ petition, interim order, dated 08.06.2011, in W.P.M.P.No.18101 of 2011 is vacated and W.P.M.P.No.18101 of 2011 and W.V.M.P.No.275 of 2013 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

04th June, 2015

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