

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 26820 OF 2005

ORDER:

This Writ Petition has been filed to call for the records relating to proceedings No. SEA/HYD/SAP.No. 5294/D.No.2007/2005, dated 29.10.2005 and Order No. DEA/1/HYD/DAT.38392/D.No.1985, dated 03.05.2005 and to set aside the same holding it absolutely illegal and arbitrary.

The facts of the case, in brief, are as follows:

The petitioner has been running the jewellery business in the premises bearing Municipal No.21-2-83, situated at Gulzar Houz, Hyderabad. Pursuant to the surprise visit conducted on the said premises, on 12.04.1999, the respondent Board *vide* proceedings dated 23.04.1999, issued an order provisionally assessing the loss to the tune of Rs.1,53,422/-, for pilferage of electricity to the premises for the period from 13.04.1998 to 31.12.1998 and again from 01.01.1999 to 12.04.1999. Challenging the said order, the petitioner filed Writ Petition No. 10390 of 1999, wherein, this Court, by way of an interim order dated 19.05.1999, directed restoration of power supply, on condition of the petitioner depositing half of the amount in demand, within ten days from that day. The petitioner complied with the said condition and got restored the power supply. Thereafter, a criminal case was also simultaneously came to be filed against the petitioner for theft of energy under Sections 39 and 44 of the Indian Electricity Act (for short, 'the Act'), which was numbered as C.C. No. 463 of 1999 on the file of the III Metropolitan Magistrate's Court, Hyderabad, but however, the petitioner was acquitted of the charges *vide* judgment dated 13.06.2000. Therefore, the petitioner filed an Application on 23.08.2005 seeking refund of the amount paid, pursuant to the interim orders in Writ Petition No. 10390 of 1999. In the interregnum, the final

assessment order dated 03.05.2005 was issued to the petitioner, determining the loss as Rs.1,25,561/-. As against the said order, the petitioner filed an Appeal, which also came to be dismissed on 29.10.2005 by the proceedings of the 1st respondent, fastening on the petitioner the liability of Rs.1,03,666/-. It may also to be noted that Writ Petition No. 10390 of 1999 was disposed of by an order dated 11.02.2000, giving liberty to the petitioner to file objections before the competent authority, and a direction to avail the remedies in accordance with law.

Learned counsel for the petitioner Sri Pratap Narayan Sanghi perniciously urges that the Writ Petition deserves to be allowed and the impugned order is liable to be set aside, for the following reasons: 1) since the criminal Court has held the petitioner not guilty of the charges levelled for the theft of energy, the authorities under the Act could not have given a finding of theft of energy; 2) the Corporation has failed to adduce evidence before the criminal Court, hence, the finding arrived at in the departmental proceedings virtually amounts to ignoring the judgment of the criminal Court; 3) notwithstanding the fact the petitioner had not chosen to submit any explanation to the show cause notice issued, there is a duty cast on the Inquiry Officer and the Appellate Authority to give an independent finding and there is a failure on the part of the respondents in giving such finding; and 4) there must be an allegation and the finding recorded to the effect that the petitioner had used a particular apparatus or a device for pilfering the energy. The learned counsel would refer to the judgment reported in ***G.M. Tank v. State of Gujarat***^[1], though it is a case under service law, to contend that once the petitioner stood acquitted in the criminal case, the department cannot be permitted to conduct the departmental inquiry. This principle has been fortified by the judgment rendered by the Supreme Court in ***S. Bhaskar Reddy v. Superintendent of Police***^[2], is what the learned counsel urges. He further places

reliance upon the judgments rendered by the Allahabad and the Madhya Pradesh High Courts in ***M/s Citi Hotel v. Commissioner, Lucknow Divn. Lucknow***^[3] and ***Smt. Bailanti Bai v. M.P. Kshetriya Vidyut Vitran Co. Ltd., Bhopal***^[4]

Sri R. Vinod Reddy, learned Standing Counsel appearing on behalf of the respondent Corporation would submit that the petitioner did not choose to submit any explanation to the show cause notice dated 08.05.1999 and even before the appellate authority, the only ground urged is that on account of the acquittal in the criminal case, the authorities could not have found him guilty, which according to the learned Standing Counsel is unsustainable on account of the law declared by the Supreme Court in ***J.M.D. Alloys Ltd. V. Bihar State Electricity Board***^[5]. The learned Standing Counsel would further submit that the High Court is not an Appellate Authority, hence, the scope of inquiry is confined only to judicial review.

Having considered the respective submissions and having regard to the facts, which are not in dispute, the principal argument thus boils down is: as to whether, in view of acquittal of the petitioner from the charges of the theft by the criminal Court, a civil liability, which was fastened on him can be sustained or not. The law on this point is no longer *res intergra*.

In ***J.M.D. Alloys case***, the Supreme Court had held that the criminal proceedings are independent of the charges levelled under the Electricity Act, which are required to be determined under the relevant regulations of the Board. As a matter of fact, in the said judgment, a reference was made to the earlier judgment in ***Hyderabad Vanaspathi Ltd.'s case*** (cited supra), wherein the Supreme Court had categorically held that the purpose of a trial under Section 39/44 of the Indian Electricity Act is entirely different and the object of prosecution is only to punish and sentence the person, who is alleged to have

committed the offence of theft. The trial of the accused in a criminal case would have no bearing in the matter of assessment made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. In the said judgment, the Supreme Court has further held that the scope of inquiry of the High Court under Article 226 is limited to judicial review. Hence, this Court has no hesitation to reject the claim of the petitioner straight away.

Insofar as the distinction, which is sought to be brought out by the learned counsel for the petitioner by placing reliance on the judgments of the Allahabad High Court as well as the Madhya Pradesh High Court is concerned, one may notice that the assessment made in the present case is based on condition No. 39 of the terms and conditions of the supply of electrical energy by the Andhra Pradesh State Electricity Board issued under B.P.Ms.No. 690, dated 17.09.1975. These terms and conditions were notified in exercise of the powers under Section 49 of the Electricity (Supply) Act, 1948. Condition No. 39 was upheld by this Court and confirmed by the Supreme Court in *Hyderabad Vanaspathi Ltd.'s case* (referred to supra), whereas the case under consideration by the Allahabad High Court, Lucknow Bench is the one falling under the regulations made under the Electricity Act, 2003 and the Supply Code notified under the Electricity Act, 2003. The Supply Code, 2005 notified under the Electricity Act, 2003 had made a specific provision of exonerating from the civil liability, where there is an acquittal in a criminal case. The same is evident from a conjoint reading of Sections 135, 143, 153 and 154 of the Electricity Act, 2003. The learned Single Judge of the Madhya Pradesh High Court had followed the judgment of the Allahabad High Court in a case falling within the scope of the Electricity Act, 2003. In the said case, it is also pointed out that the criminal Court had failed to determine the civil liability as required under Section 154(5) of the Electricity Act, 2003. In sum and substance, both the judgments of the Allahabad and the Madhya

Pradesh High Courts are distinguishable on the ground that they are not falling within the terms and conditions as notified under the Electricity Act, 1948.

Further, it may also be noted that the petitioner had failed to avail the opportunity to put forward his case on merits, both at the inquiry stage as well as before the Appellate Authority, except taking a plea before the Appellate Authority that acquittal in the criminal Court would automatically entitle him to seek exoneration from the civil liability that was sought to be fastened on him under condition No. 39 of the terms and conditions. This Court is conscious of the fact that *if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.* In the instant case, there being no procedural irregularity in conducting the inquiry and this Court not being an Appellate Authority and the contention of the learned counsel for the petitioner not being tenable on account of the law laid down by the Supreme Court, the Writ Petition fails and accordingly, it stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

18th August 2016

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[\[1\]](#) 2006 AIR SCW 2709

[\[2\]](#) (2015) 2 SCC 365

- [\[3\]](#) AIR 2009 Allahabad 137
- [\[4\]](#) AIR 2014 Madhya Pradesh 173
- [\[5\]](#) AIR 2003 Supreme Court 1354(1)