THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.14712 of 2014

ORDER

This writ petition is filed challenging the letter dated 09.05.2014 issued by the third respondent demanding the petitioner to pay an outstanding amount of Rs.4,44,700/-.

2. The petitioner is engaged in the business of construction of various infrastructure projects. The Government of Andhra Pradesh entrusted construction of road work i.e., widening and strengthening of Chittoor-Puttur road to the petitioner vide agreement dated 12.08.2009. For execution of the said works, the petitioner approached the second respondent for power connection and made an application on 14.06.2010 for supply of electricity. After fulfilling all formalities, the petitioner entered into an agreement dated 18.10.2010 with respondents 4 and 5. In terms of the said agreement, the petitioner paid an amount of Rs.5,50,000/- to the second respondent towards security deposit and availed power supply till March, 2013. Since the project work was at finishing stage, the petitioner, by letter dated 21.03.2013, requested the third respondent to cancel the HT line service. Pursuant to the same, the petitioner's service connection was dismantled on 08.05.2013 i.e., after 48 days, but the third respondent continued to issue bills. The third respondent also issued a letter dated 27.11.2013 to the petitioner to pay an amount of Rs.8,13,681/- towards balance amount excluding dismantled charges. Thereafter, the petitioner addressed a letter dated 11.01.2014 to settle their dues and refund the security deposit amount. In spite of the said letter, no action has been taken, but on the contrary, the third respondent issued the impugned letter dated 09.05.2014 demanding the petitioner to pay an amount of Rs.4,44,700/-. Challenging the same, the present writ petition is filed.

3. The third respondent filed a counter affidavit admitting about the letter issued by the petitioner seeking to cancel the H.T. Line. In paragraph 10 of the counter affidavit, the details of outstanding arrears

due to the respondents by the petitioner have been given. The duplicate form is set out as under;

Description	Amount (Rs.)
Monthly Minimum for three months from the date of disconnection.	
April, 2013 May, 2013 June, 2013	257075.32 281407.72 281185.00
FSA Oct/2010 to March, 2011 FSA Apr/2011 to Mar/2012 FSA Jul/2012 to Mar/2013	127085.00 194262.78 49971.95
TOTAL	1190987.01
(-)Difference between Normal Tariff Bill and R & C bill for Oct/2012 (-) ISD as per Bank rate of Interest difference amount. (-) Minus balance of the Consumer as on March, 2013	58300.00 13070.00 124918.00
Total amount to be paid by the consumer	994700.01
(-) Security Deposit Available	550000.00
Net amount to be paid by the consumer	444700.01

In the counter, it is also stated that as per the general terms and conditions of the agreement, the consumer has to pay three months minimum charges to the respondents and as the petitioner's service connection was dismantled on 08.05.2013, the petitioner is liable to pay three months minimum charges.

4. Heard both sides and perused the material on record.

5. Sri S. Rambabu, learned counsel for the petitioner, would submit that in terms of the agreement dated 18.10.2010, particularly Clause 7, the agreement should automatically come to an end by 21.04.2013 and that the petitioner has set out all these facts in its letter dated 11.01.2014 addressed to the Managing Director and requested to refund the security deposit after deduction of arrears as on 08.05.2013, copies of which, were also marked to the other respondents.

6. Clause 7 of the agreement dated 18.10.2010 reads as under;

> **Determination of the Agreement:**
>
> I/We shall be at liberty to determine the Agreement by giving in writing one month notice expressing such intention at any time after the period of two years. The Company may terminate this Agreement at any time giving one month notice, if I/we violate the terms of this Agreement or the General Terms and Conditions of Supply notified by the Company from time to time or the provisions of any law touching this Agreement including the Electricity Act, 2003, the Rules and Regulations framed there under. This Agreement shall remain in force until it is terminated as above indicated. In computing the periods of 2 years referred to above the period or periods for which the annual minimum guarantee has or have been waived or reduced shall be excluded.

In terms of the specific agreement entered into between the petitioner and the third respondent, the petitioner has an undoubted right to terminate the agreement by giving one month notice. The said agreement would prevail over the general terms and conditions of supply which provides for three months notice to be given. This aspect of the matter is no longer *res integra* and the same has been settled by the judgment of the Apex Court in **Indian Aluminium Company V. Kerala State Electricity Board**[1].

7. In that view of the matter, the petitioner would be deemed to have been terminated by 21.04.2013 or at any rate by the date of billing in the month of April, 2013. In other words, the demands made on the petitioner for payment of monthly minimum charges for the months of April, May and June, 2013 cannot be sustained. However, the FSA charges from October, 2010 to March, 2013 are liable to be paid by the petitioner.

8 . In that view of the matter, the Writ Petition is allowed with a direction to the respondents to refund the excess amount by working out the charges treating the termination of the agreement by 21.04.2013 (By billing month of 2013), within 8 weeks from the date of receipt of a copy of the order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

8th March, 2016
sj

[1] (1975) 2 SCC 414