THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.17721 of 2006

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

> "... to issue a Writ of Mandamus or any other appropriate writ order or direction declaring the impugned proceedings No.SE/O.OGL.SAO.HT/D.No/7642/06 dated 21.08.2006 on the file of the Superintending Engineer, Operation Circle, APSPDCL, Ongole, as illegal, arbitrary and without jurisdiction ...."

2. I have heard Sri D. Krishna Murthy, learned counsel for the writ petitioner. There is no representation for the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The Parchuru Cotton Growers Co-operative Spinning Mills Limited (hereinafter, 'PCGCSM' for short) was originally set up as a Co-operative Society under the A.P. Co-operative Societies Act, 1964, at Inkollu village of Prakasam District. In the said PCGCSM the Government of Andhra Pradesh is the major shareholder. However, the same was running in losses since a long time. Therefore, the Government of Andhra Pradesh decided to privatize the said Spinning Mill. The Government of Andhra Pradesh in the process of undertaking economic reforms planned to restructure/downsize or privatize public enterprises including co-operative institutions. For implementation of the said scheme/plan, Implementation Secretariat has been set up by the Government. The said Secretariat was authorised to notify bids on behalf of the Registrar of Co-operative Society for the sale of assets of PCGCSM. By an advertisement, the assets relating to PCGCSM have been sold to the writ petitioner through bid process on the terms and conditions set out in the sale and purchase agreement dated 23.09.2002. The writ petitioner paid the entire bid amount of Rs.4,59,99,999/- to the Government of Andhra Pradesh. The possession of the Mill was handed over by the Government to the writ petitioner on 28.11.2002. While so, the 1st respondent issued the letter impugned in this writ petition requesting the writ petitioner to pay an amount of Rs.1,03,80,760/- within three days towards electricity consumption charges and balance arrears without any surcharge or penal charges; and it is further stated in the said letter that failing such payment, the HT service No.ONG.147 is liable for disconnection without further intimation. Having been aggrieved of the said notice, the petitioner filed this writ petition.

4. This Court on 25.08.2006 while admitting the writ petition granted interim suspension of the impugned notice.

5. In this background and setting of facts, the short question that falls for consideration is as to whether the writ petitioner is liable to pay the amount demanded in the notice/letter impugned.

6. Learned counsel for the petitioner while stating that under clause 1.5 of the sale and purchase agreement, dated 23.05.2002, all amounts payable in respect of the assets of the Spinning Mill including electricity charges upto the completion date, 28.11.2002, shall be to the account of the vendor, that is, the Implementation Secretariat and that all amounts payable in respect of the said assets after the completion date shall be to the account of the writ petitioner contended that even in the demand notice/letter which is impugned in this writ petition, the 1st respondent has only stated that it is the moral responsibility of the writ petitioner as

the Implementation Secretariat failed to discharge the liabilities and that therefore there is no legal liability to pay the amount demanded in the notice/letter impugned in this writ petition.

7. Learned counsel having filed WPMP.No.31393 of 2016 to receive copies of letters dated 17.01.2003, 21.10.2005, 12.06.2006, 24.07.2006, 24.08.2006, 30.12.2002 and a certificate as additional evidence to substantiate his case drew the attention of this Court to the said letters. As the said documents are necessary for effective adjudication of the issue involved, the petition is ordered and the same are taken as additional evidence.

In the letter dated 17.01.2003 of the Principal Secretary to the Government, Public Enterprises Department, addressed to the Chairman and Managing Director of A.P. Southern Power Distribution Company Limited, the said Secretary has categorically stated that the purchaser of the assets has no obligation to discharge the liabilities of the Spinning Mill relating to the period prior to 28.11.2002 and that it is the responsibility of the Implementation Secretariat to ensure that the liabilities of the various creditors of the Spinning Mill are duly discharged in the order of priority set out in the scheme framed under Section 12-A of the Act and that accordingly, the Implementation Secretariat will discharge the liabilities of the Spinning Mill including electricity dues as per the priorities set out in the said scheme as soon as the interim order of this Court dated 04.02.2002 in WP.No.1979 of 2002 is vacated by this Court. Further the letter, dated 21.10.2005, addressed by the Superintending Engineer, Operation Circle, Ongole, to the Principal Secretary to the Government of Andhra Pradesh, Public Enterprises Department, also discloses that the said Engineer in the said letter acknowledged part payment by way of demand draft in a sum of Rs.3,67,02,199/- while *inter alia* stating that the balance amount due is Rs.1,39,28,213.50 ps. The subsequent letter, dated 12.06.2006, also discloses that the balance amount due is Rs.1,39,28,213.50 ps. The letter, dated 24.07.2006, addressed by the said Engineer to the Implementation Secretary of the Implementation Secretariat also would disclose that as on the date of the said letter the balance amount due towards electricity arrears is Rs.1,03,80,760/- and that it is the responsibility of the Implementation Secretariat to discharge the liabilities of the Spinning Mill including electricity charges upto 28.11.2002 as per the priorities set out in the said scheme. The contents of the letter, dated 24.08.2006, addressed by the Superintending Engineer to the Principal Secretary to the Government, Public Enterprise Department, also are to the above effect.

8. A reading of the material documents including the letters would clearly disclose that the Implementation Secretariat and the Government are not disputing the liability of the Implementation Secretariat to discharge the electricity dues prior to 28.11.2002 and that it is not the liability of the writ petitioner to discharge the said arrears/dues. Therefore, the material record reflects that the writ petitioner has no legal obligation or liability to discharge the electricity dues or pay the amount demanded in the letter/notice which is impugned in this writ petition.

9. However, before parting it is important to note as to whether the electricity department is having a charge on the property/assets in view of the provisions of the Indian Electricity Act. This question is no longer *res integra* in view of the decision of the Supreme Court in Isha Marbles

v. Bihar State Electricity Board and another[1]. In the said decision, in a similar set of facts while considering the liability of the auction purchaser to pay the electricity energy charges prior to the date of purchase, the Supreme Court having considered the provisions under the Electricity laws held that there is no charge over the property and that when the premises comes to be owned or occupied by the auction purchaser and when such purchaser seeks supply of electricity energy he cannot be called upon to clear the past arrears as a condition precedent to supply and that the Board cannot seek the enforcement of contractual liability against the 3rd party as what matters is the contract entered into by the erstwhile consumer with the Board. In view of the clear ratio in the decision, the respondents even cannot claim the arrears by invoking any provision of the Electricity Act and Rules made thereunder as it is admitted that the obligation is not a legal obligation and that as per sale and purchase agreement dated 23.09.2002, all amounts payable in respect of assets of the Spinning Mills including electricity charges upto completion date, that is, 28.11.2002, shall be to the account of the vendor, that is, implementation Secretariat but not to the account of the writ petitioner.

10. On the above analysis, this Court finds that the writ petition is having acceptable merit and deserves to be allowed.

11. In the result, the Writ Petition is allowed as prayed for.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.SEETHARAMA MURTI, J

17-01-2017
Vjl

[1] (1995) 2 SCC 648