

THE HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos.19726,19735, 19743, 25485, 6916, 14661,
14082, 14083, 14956, 10390, 10389, 6995, 6981, 6979, 9495,
9499, 14947, 14660 and 14652 of 2017,

COMMON ORDER.

All these Writ Petitions are being disposed of by this Common order as they relating to issuance of provisional demand notice on the ground that petitioners are utilizing power supply for a purpose other than to which it was given.

The common case of the petitioners is that they are small scale industries and they are running either by ownership or on lease and they are being charged under LT III category. The tariff for each category of Industries will be decided by respective electricity regulatory conditions. But now, the demand notices are issued on the ground that the activity of the petitioner industries will come under LT II category but not LT III category. Whether a particular industry comes under LT II category or LT III category is a question of fact. After determination of that question of fact, the application of the tariff order would come. On the basis of decision on the question of fact, the respondents are entitled to issue a demand notice. If there is any change in the category, the procedure prescribed in Clause 3.4.1 of General Terms and Conditions of supply have to be followed. It is also the case of the respondents that they can initiate action under Section 126 of the Electricity Act, 2003. In order to exercise the power under Section 126 of the Act,

the Assessing Officer must come to the conclusion that the petitioners industry had indulged in unauthorized use of electricity. What is unauthorized use of electricity is explained in the explanation to the said section and it reads as follows:

- (a) *“assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*
- (b) *“unauthorized use of electricity” means the usage of electricity—*
 - (i) *by any artificial means; or*
 - (ii) *by a means not authorised by the concerned person or authority or licensee; or*
 - (iii) *through a tampered meter; or*
 - (iv) *for the purpose other than for which the usage of electricity was authorized.”*

Even it is assumed that the electricity is being used for the purpose other than for which it was authorized, it also involves the decision on the usage, purpose and relevant category under which it can be classified. The respondents may be taking one point of view and the petitioners may be objecting to the same. A decision has to be arrived in respect of each unit/petitioners. A broad principle cannot be laid in respect of these cases. Such enquiry into facts can be undertaken only after hearing the petitioners and the respondents by a competent authority and in the facts and circumstances of the case, this court feels that the Consumer Grievances Redressal Forum

constituted under sub-section 5 of Section 42 would be the appropriate authority and this court cannot undertake such an exercise.

In the circumstances, it is a fit case for relegating the matter to the said redressal grievance authority.

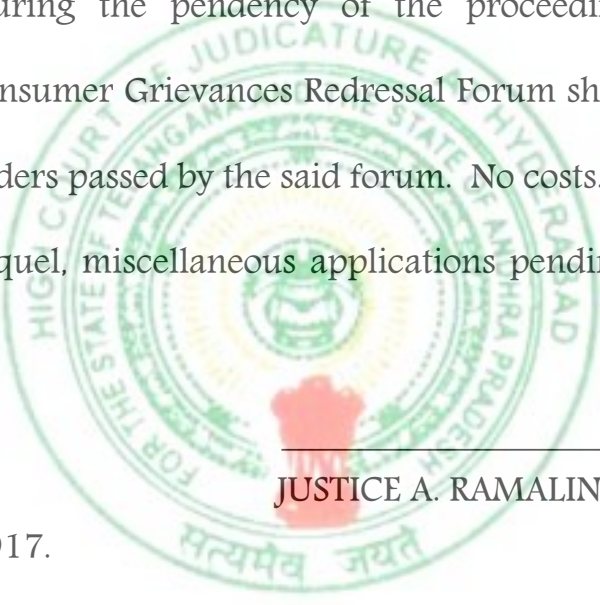
Now the demand notices are issued by treating the consumption of electricity of the petitioners under L.T.II category whereas petitioners have been paying electricity under Section LT III category till the demand notices are issued. It is noticed that the difference between L.T.II and L.T.III category is of 25% residential if the maximum tariff is taken into account in respect of these two categories. In order to protect the revenue of the respondents and not causing undue loss to the petitioner, this court feels that if the petitioners deposits 25% of the now demanded amount before the competent authority and continue to pay at the tariff applicable under L.T.III category in respect of the units plus 25% of the amount pending disposal of the grievance of the petitioners, the interest of justice would be met.

In view of the above, all these writ petitions are disposed of with the consent of the counsel for the petitioners as well as counsel for the respondents by remanding the matter to the respective Consumer Grievances Redressal Forum of the respondents. It is open to the petitioners to submit their grievance in writing to the forum to the demand notices issued by the respondents raising all pleas

including the violation procedural requirements based on their activity within a period of thirty (30) days from the date of receipt of a copy of this order and on receipt of such complaint, it is open to the respondents to submit their defence before the concerned forum and after hearing parties, the concerned forum shall dispose of the same in accordance with law within a period of three months, after submission of defence by the respondents.

It is needless to observe that the payment of amount by the petitioners during the pendency of the proceedings before the concerned Consumer Grievances Redressal Forum shall be subject to the further orders passed by the said forum. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



JUSTICE A. RAMALINGESWARA RAO

Dated 7-8-2017.

Dvs

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