` THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36273 of 2012

ORDER:

This writ petition filed under Article 226 of the Constitution of India, challenges the Final Assessment Order No.SEA/HYD/F.No. /SAH No.11194 D.No.2777 dated 23.10.2012 passed by the Superintending Engineer, Assessments, Hyderabad-6th respondent herein.

2. The facts and circumstances, in nut-shell, leading to the filing of the present writ petition are as under:

The Assistant Divisional Engineer (Operation), APCPDCL-5th respondent herein vide letter bearing Lr.No.ADE/OP/GREENLANDS/D.No.1984 dated 29.11.2011 issued a provisional assessment order, assessing provisionally a sum of Rs.13,81,76,688/- under Section 126 of the Electricity Act, 2003, while alleging unauthorised usage of electricity, for the purpose other than for which usage of electricity was authorised for the period from April 2004 to September 2011. Assailing the said provisional assessment order dated 29.11.2011, petitioner filed Writ Petition No.32099 of 2011 and on 17.12.2011, this Court passed an interim order, directing the Respondents not to disconnect the power supply, subject to the petitioner depositing a sum of Rs.1.50 crores with the Respondents within a period of four weeks and the petitioner herein deposited the said amount. On 6.3.2012, this Court disposed of the said Writ Petition No.32099 of 2011, keeping it open to the petitioner to file objections to the provisional assessment order, including those under Section 56(2) of the Electricity Act, 2003 with a further direction to the assessing authority to give opportunity to the petitioner before passing final order of assessment. This Court also directed continuation of the interim order dated 17.12.2011 till passing of final assessment orders. Thereafter, on 23.8.2012, petitioner filed objections to the provisional assessment order and the Superintending Engineer-6th respondent herein, vide impugned order dated 23.10.2012, confirmed the provisional assessment order, fixing the liability as Rs.13,81,76,694/-, while rejecting the objections filed by the petitioner herein. The said final order of assessment is under challenge in the present writ petition.

3. While ordering rule nisi on 26.11.2012, this Court in W.P.M.P.No.46074 of 2012 granted interim suspension of the impugned order on condition of petitioner depositing a further sum of Rs.1.5 crores within a period of six weeks. On 22.3.2016, this Court directed the petitioner to deposit a further sum of Rs.43,00,000/- and the petitioner complied with the said order also. W.V.M.P.No.392 of 2016 supported by a counter affidavit of Respondents 3, 4 and 6 has been filed and a reply has also been filed by the petitioner herein.

4. Heard Sri S.Ravi, learned Senior Counsel, representing Sri Ch.Pushyam Kiran, learned counsel on record for the petitioner and Sri R.Vinod Reddy, learned Standing Counsel for the Respondents, apart from perusing the material available before the Court.

5. It is contended by the learned Senior Counsel for the petitioner that the impugned action, which culminated in the final assessment order is highly illegal, arbitrary, unreasonable and without jurisdiction and violative of Article 14 of the Constitution of India; that the impugned action is contrary to G.O.Ms.No.114 Finance and Planning (Plg.IT&C) Department dated 25.5.1999, G.O.Ms.No.27 Information Technology and Communications Department dated 27.6.2002 and G.O.Ms.No.11, Information Technology and

Communications Department dated 21.3.2005; that the said Governmental orders cover mobile companies and BPOs also; that the claim is barred by limitation under Section 56(2) of the Electricity Act, 2003; that though the petitioner submitted extensive objections to the provisional assessment, 6th respondent assessing authority did not assign any valid reasons for rejecting the same.

6. Per contra, the learned Standing Counsel for the Respondents vehemently contended that there is no illegality nor there is any procedural infirmity in the questioned action, as such, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended that the petitioner does not fall under the definition of I.T. Industry as per G.O.Ms.No.11 dated 21.3.2005, as such, the respondents are perfectly justified in passing the order under challenge. It is further argued that the contention that the impugned demand is barred by limitation under Section 56(2) of the Electricity Act, 2003 cannot be sustained; that the 6th respondent has assigned valid and cogent reasons, therefore, no interference of this Court under Article 226 of the Constitution of India is warranted; that the writ petition is not maintainable in view of availability of alternative remedy under the Electricity Act.

7. In the above background, now the issue that emerges for consideration of this Court is - *"whether the impugned action which culminated in final orders of assessment passed by the 6th respondent is sustainable and tenable"* ?

8. The information available before this Court manifestly discloses that the State Government vide e-Lr.No.56545/ITC/Prom1/2003-2 dated

22.5.2003, declared the subject building of the petitioner as an I.T. Park. Thereafter, the Joint Director of Information and Communications Department issued a Certificate also in furtherance of the same. In order to resolve the issue on hand, it would be appropriate and apposite to look into the relevant Governmental orders issued from time to time. The State Government issued G.O.Ms.No.114, Finance and Planning (Plg.IT&C) Department dated 25.5.1999, providing package of incentives for the IT and IT Infrastructure Industry, to enable the State to leverage its resources and facilitate their optimal utilization to the best advantage of the State; to provide a relative competitive edge over other competing markets; tap the massive employment potential of the global IT market in IT (software and hardware) and IT enabled services. According to Note 1 and 2 of paragraph 11 of the said Governmental Order, I.T. includes IT. and Telecommunications and I.T. Industry includes IT hardware and software industries and IT software industry includes IT software, IT services and IT enabled services. The said policy enunciated by the State Government remained operative till 24.5.2002. Subsequently, the State Government issued G.O.Ms.No.27 dated 27.6.2002 and paragraph 5 of the said Governmental Order reads as under:

"Definitions:

a) IT Industry includes IT hardware and software industries. IT software industry includes IT software, IT services and IT enabled services.

b) IT infrastructure means the physical infrastructure built by a firm or a builder and sold/leased or transferred on lease-cum-sale to an IT industry for its own use or the infrastructure built by an IT industry for its own use.

c) Telecommunication companies include Basic Telecom Service Providers (fixed), VSAT, Cellular (Mobile) companies, Telecom Infrastructure companies, ISPs and any other value added services licensed by Ministry of Communications & IT, Government of India.

d) Date of commencement of commercial operations is the date on which commercial operations are started, subject to furnishing of the first sale bill/invoice".

9. Thereafter, the Government issued G.O.Ms.No.11, Information Technology & Communications Department dated 21.3.2005. Clause 34 of the said Governmental Order deals with definitions, which reads as under:

"Definitions:

a) IT Industry includes Hardware Manufacturing (IT Hardware & Electronics) and IT/ITES units/companies. IT/ITES units/companies include IT software, IT services and IT Enabled Services/BPO/Animation & Gaming.

b) IT Infrastructure companies mean the real estate Infrastructure developer or a builder constructing IT Office space for sale/lease or for lease-cum-sale to IT Industry/Financial Institution for the purpose of IT activities by the IT Industry defined above.

c) Telecommunication companies include Basic Telecom Service Providers (fixed), VSAT, Cellular (Mobile) companies, Telecom Infrastructure companies, ISPs and any other value added services licensed by Ministry of Communications & IT, Government of India.

d) ICT: means the IT Industry and Telecommunication Companies.

e) Date of commencement of commercial operations is the date on which commercial operations of the company has commenced i.e. the date of the first commercial sale bill/invoice raised by the ICT company.

f) SME: Small and Medium Enterprises are Companies with sales income/turnover less than Rs.10 crores and above Rs.1 crore per annum.

g) Existing IT Industry Units in Andhra Pradesh commencing operations at a new location within the state should be 100 kms away from the existing location for being treated as a new unit to be eligible for the incentives under this policy".

10. The contention of the learned senior counsel for the petitioner is that the case of the petitioner squarely falls under the definitions as enumerated supra. In the objections submitted to the provisional assessment order, the petitioner herein at paragraphs 3 and 4 stated as follows:

> "3. M/s Bharti Airtel Ltd have been in occupation of ground floor, first floor, second floor, third floor and fourth floor since beginning till this date. The said company is a leading integrated telecommunications company and ranks amongst the top 5 mobile service providers globally in terms of subscribers. In India, the company's product offerings include 2G, 3G and 4G services, fixed line, high speed broadband through DSL, IPTV, DTH, enterprise services including national and international long distance services to carriers. It has over 246 million customers across its operations.
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> 4. In so far as 5th floor, 6th floor and 7th floors are concerned, they were in occupation of M/s Webhelp/Brigade Global Services Pvt. Ltd. from July 2003 till they have vacated the said floors in December, 2008. We have also enclosed enclosures 19 and 20 along with our objections filed on 18.4.2012 at page 114 and 115 as to the status of M/s Webhelp Global Services Pvt. Ltd., subsequently changed its status to Brigade Global Services Pvt. Ltd. M/s Brigade Global Services Pvt. Ltd., has focused on providing business process outsourcing (BPO) services and knowledge process outsourcing (KPO) services for global corporations. Brigade's global service delivery model provides clients with an opportunity to capture to competitive advantage of global labour markets to dramatically improve business processes while delivering them at substantially lower costs. Brigade has acquired the capability and is currently providing a wide spectrum of BPO and KPO services – voice support, email, web chat and transactions. Brigade has the expert ise to design, implement, train and maintain an entire customer support and service division for small to large corporations".

11. In the impugned order of final assessment dated 23.10.2012, the 6th respondent at paragraph 9(ii) rejected the claim of the petitioner herein on the ground that M/s Bharti Airtel, a mobile company, and M/s Webhelp/Brigade Global Services Pvt. Which is BPO do not fall under the

definition as provided under clause 34 of G.O.Ms.No.11 dated 21.3.2005. A reading of the above clause 34 makes it abundantly clear that Cellular (Mobile) Companies fall under clause 34(c) and BPO falls under clause 34(a). Therefore, the case of the Respondents, in the considered opinion of this Court that the petitioner herein is not entitled for the benefit under G.O.Ms.No.11 dated 21.3.2005, by any stretch of imagination cannot be sustained. It is also required to be noticed that the benefits under G.O.Ms.No.11 dated 21.3.2005 remained operative for a period of five years only from the date of the said Governmental Order. Therefore, the petitioner herein is entitled for the benefit of the said Governmental Order for a period of five years from the date of issuance of the said G.O. Further, the contention of the Respondents that in view of availability of alternative remedy of appeal, the present writ petition is not maintainable, in the considered opinion of this Court, cannot be a ground to reject the present writ petition, since this Court entertained the present writ petition as long back as in the year 2012 and issued rule nisi and passed interim orders from time to time. The said ground of alternative remedy, in the considered opinion, cannot be sustained, having regard to the facts and circumstances of the case. In view of these findings of this Court on the applicability of G.O.Ms.No.11 dated 21.3.2005 in favour of the petitioner and alternative remedy, this Court does not propose to go into other aspects of the matter.

12. Accordingly, the writ petition is allowed, setting aside the final order of assessment passed by the 6th respondent in Order No.SEA/HYD/F.No. /SAH No.11194 D.No.2777 dated 23.10.2012. It is further declared that the petitioner herein is entitled for the benefit under G.O.Ms.No.11 dated 21.3.2005 only for the period covered by the said Governmental Orders and it

is open for the Respondents to raise the demand, in accordance with law and in the light of the observations made above. The Respondents shall adjust the amounts already paid by the petitioner herein in the future bills. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 4.7.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36273 of 2012

4.7.2017

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