

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.26236 of 2017

ORDER:

Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner states that he is the absolute owner of property in Plot No.31 consisting of two floor RCC building in an extent of 473.73 square yards situated at Gunipudi, Bheemavaram Mandal, and he purchased the same under a registered sale deed dated 23.07.2015. He states that he leased out the said premises with vacant site in favour of M/s.Ashwini Fishers Company Private Limited for a period of seven years with effect from 01.09.2015 and the lessee is in possession of the same. Though he wanted to make an application seeking permission for conversion of the service connection from LT3(A) category to domestic category, he could not do so. In the meanwhile, the fifth respondent issued a provisional assessment order on 14.02.2017 stating that, on inspection made on 09.02.2017 it was observed that the power supply was being used for working men hostel other than the purpose for which it was released, and provisionally assessed the amount of loss as Rs.3,82,335/-. The petitioner deposited 50% of the said amount, but could not make a representation to the fourth respondent against the said provisional assessment order. The fourth respondent finally assessed the amount as Rs.6,57,531/-. The petitioner preferred an appeal against the said order dated 01.05.2017 to the third respondent. But, the third respondent rejected the appeal on 20.06.2017 with the following cryptic order:

“With reference to your representation it is to inform that, your representation cannot be considered due to non-payment of 50% assessment amount of final order and appeal fee in time as per section 127(2) of amendment Electricity Act, 2003.”

Learned Counsel for the petitioner places reliance on the following clause available in the amendment of general terms and conditions of supply made under proceedings dated 31.05.2014 and submits that the payment of 50% of the provisionally assessed amount is sufficient for consideration of the appeal.

“15) For Clause 9.5.1, the following Clause shall be substituted namely:-

“9.5.1. The consumer may make a representation to the Appellate Authority within 30 days of Final Assessment Order (Section 127(1) of the Act), provided that the consumer deposits an amount equal to half of the final assessment amount in accordance with Section 127(2) of the Act; provided, however that the consumer shall not be required to deposit any such amount if such consumer has already deposited 50% of the provisionally assessed amount with the Company under clause 9.2.4 hereof.””

The said position is not disputed by the learned Standing Counsel.

In view of the same, this Writ Petition is allowed by setting aside the impugned order of the third respondent dated 20.06.2017 and remanding the matter to the third respondent for consideration of the petitioner's appeal afresh in accordance with law and passing appropriate orders after hearing the petitioner, within a period of two months from the date of receipt of a copy of this order. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.08.2017
vs