

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.9888 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the writ petitioner requesting to declare the proceedings No.SAT.9942/SKL/D.TKL/PSA/P/F.704/D.No.818, dated 23.03.2001, of the 1st respondent and the proceedings No.CGM/O&CS/EPDCL/VSP/O&M-II/P.F.Case/D.No.1556/2007, dated 20.04.2007, of the 3rd respondent, as illegal, arbitrary and unsustainable and to set aside the said proceedings.

2. I have heard the submissions of Sri P.Veera Reddy, learned counsel for the writ petitioner, and of Sri M.Ravindra, learned Standing Counsel for APEPDCL, representing the respondents 1 to 3. I have perused the material record.

3. The facts, which are necessary for consideration, in a nutshell, are as follows:-

The writ petitioner was availing the supply of electricity under the terms and conditions notified by the APTRANSCO from time to time, with service connection No.61, Cat-III, Pedatamarapalli, Srikakulam District, with a contracted load of 15 HP. When the said service connection was inspected by the then Assistant Divisional Engineer/DPE/SKL, on 17.04.1996, it was noticed that there was no seal to the meter box and also no terminal cover and that the writ petitioner/consumer was utilising the electric supply for his rice mill by

joining the incoming and outgoing wires of all the three phases with the help of aluminium wire, outside the metre. Therefore, a case was booked against the writ petitioner/consumer for pilferage of energy. Thereafter, the Assistant Divisional Engineer/ Operation/ Palasa, provisionally estimated the loss sustained by the respondent Company at Rs.11,993/- plus other charges and served a notice on the writ petitioner/consumer *vide* letter No.329, dated 23.04.1996. After a detailed examination of the case, the Superintending Engineer/Assessments/Visakhapatnam, served a notice on the writ petitioner/consumer, *vide* letter No.708, dated 13.05.1999, to show cause as to why the loss sustained by the respondent company on account of the pilferage in use of energy should not be estimated at Rs.2,90,618/- plus other charges and be recovered from the writ petitioner/consumer. On receipt of the initial assessment notice, the writ petitioner/consumer paid the said amount of Rs.11,993/- by way of a demand draft bearing No.27664, dated 24.04.1996, drawn in favour of the Assistant Accounts Officer/E.R.O./Kasibugga. Subsequently, the Superintending Engineer, Assessments, Visakhapatnam, with whom the matter was pending enquiry and by whom final assessment notice was to be issued, called for the objections of the writ petitioner/consumer to the show cause notice dated 13.05.1999. The petitioner/consumer submitted a detailed explanation to the Superintending Engineer, Assessments, Visakhapatnam, on 27.06.1999. On receiving the explanation, the Superintending Engineer, Assessments, Visakhapatnam has completed the enquiry and issued final proceedings of assessment, *vide*

proceedings No.647, dated 12.01.2001, confirming the initial assessment of Rs.11,993/-. Thus, according to the writ petitioner/consumer, the matter has been closed. However, admittedly, after about two months, i.e., on 18.03.2001, the same Superintending Engineer/Assessments/Visakhapatnam sent another show cause notice, vide letter No.434, dated 07.11.2000, directing the writ petitioner/consumer to submit his objections for final assessment of Rs.4,80,663/-. The petitioner raised objections alleging that the said second show cause notice is antedated and that it was in fact served on 18.03.2001 and that the enquiry has already been completed and the proceedings were finally closed. The writ petitioner/consumer submitted his objections to the Superintending Engineer, Assessments, Visakhapatnam, on 12.04.2001 enclosing a copy of the final assessment proceedings No.647, dated 12.01.2001, referred to *supra*. While so, the Superintending Engineer, Assessments/Visakhapatnam sent the second proceedings of final assessment No.818 with an ante date 23.03.2001; the same was served on the writ petitioner/consumer on 12.05.2001 for an assessed amount of Rs.4,80,663/-. The writ petitioner/consumer raised objections alleging that the said proceedings are also antedated and that they are served on the writ petitioner/consumer on 12.05.2001 and that the earlier proceedings were suppressed and that the provision of law does not empower the assessment authority to issue a second show cause notice after the matter is concluded. In the circumstances stated, the petitioner/consumer filed a W.P.No.12190 of 2001 before this Court. In the W.P.M.P. No.15117 of 2001 filed in the

said writ petition, this Court gave an interim direction for continuation of power supply to the petitioner without insisting for payment of the amount demanded in proceedings, dated 23.03.2001. However, while disposing of the main writ petition filed by the writ petitioner/consumer, on 24.06.2002, this Court directed the Chief General Manager, O&CS/EPDCL/Visakhapatnam, to pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of the said order, however, after giving an opportunity to the writ petitioner/consumer. However, the proceedings, dated 20.04.2007, were issued calling upon the writ petitioner/consumer to pay an amount of Rs.2,90,818/- less the amount already paid to the Assistant Accounts Officer/E.R.O./Kasibugga, within 30 days. The said proceedings were issued on the ground that due to oversight while finalizing the proceedings against earlier show cause notice *vide* letter No.708 dated 13.05.1999, the final orders were issued *vide* proceedings No.SAT/9884/D.No.647, dated 12.01.2001, for Rs.11,993/- plus other charges as similar to the provisional assessment notice issued by the Assistant Divisional Engineer/Operations/Palasa erroneously without taking the revised show cause notice, dated 07.11.2000, into cognizance and that the said error has occurred due to oversight. Aggrieved thereof, the writ petitioner/consumer filed the present writ petition.

4. At the hearing, the learned counsel for the writ petitioner, while narrating the chronology of events which are already stated *supra*, would submit as follows: 'After the show cause notice was issued and

explanation was offered by the petitioner, the Superintending Engineer/Assessments/Visakhapatnam issued final orders, *vide* proceedings No.674 dated 12.01.2001, demanding the writ petitioner/consumer to pay Rs.11,993/-; the petitioner accordingly paid the said amount by way of a demand draft bearing No.27664, dated 24.04.1996, drawn in favour of the Assistant Accounts Officer, E.R.O., Kasibugga. With the said final proceedings and payment made, the matter has attained finality. Ignoring the said proceedings, a revised show cause notice, in letter No.434, dated 07.11.2000, was issued for higher estimated amount, ante dating the said notice. Even before the explanation for the letter, dated 12.01.2001, reached the first respondent, the orders, dated 23.03.2001, were allegedly passed holding that the notice was acknowledged by the writ petitioner and that no explanation was offered; the first respondent passed final orders confirming the amount to be paid by the writ petitioner as Rs.4,80,813/-. A copy of the said order was received by the petitioner on 12.05.2001. Then, the writ petitioner preferred an appeal before the 2nd respondent. Since no orders were passed on the appeal preferred by the petitioner, the petitioner filed W.P.No.12190 of 2001 before this Court and this Court admitted the writ petition and granted interim direction for disposal of the appeal by directing the 2nd respondent to pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of the said order. However, the 2nd respondent erroneously dismissed the appeal confirming the orders of the 1st respondent. However, the proceedings, dated 20.04.2007, were issued calling upon the writ petitioner/consumer to pay an

amount of Rs.2,90,818/- less the amount already paid to the Assistant Accounts Officer, E.R.O., Kasibugga, within 30 days. Under Section 30 of the Electricity Act, 1910, ('the Act', for brevity) when once final orders are passed by the authority concerned, there is no provision empowering the same authority to issue second show cause notice and revise the earlier orders, which have become final. In fact, the second show cause notice, dated 07.11.2000, was served on the petitioner on 18.03.2001, and the said fact would indicate that the impugned order is unsustainable.'

5. *Per contra*, the learned Standing Counsel appearing for the respondents would submit as follows: 'Under Section 135 of the Act, the Company is empowered to make an assessment of pilferage charges up to a period of one year. Therefore, the second show cause notice was issued as earlier final assessment was only made for eight days by over sight. Therefore, the second show cause notice and the proceedings or orders passed finally pursuant to the second show cause notice are valid and sustainable. The 1st respondent and the 2nd respondent acted well within their jurisdiction in passing the final orders impugned in this writ petition. The writ petition may be dismissed.'

6. I have bestowed my attention to the facts and submissions.

7. The facts and the contentions, which are narrated *supra* in detail, need not be restated. On detection of pilferage, a show cause notice was issued to the petitioner by the respondent Company and the petitioner gave an explanation to the same. Thereafter, the final

assessment was made by the Superintending Engineer/Assessments/Visakhapatnam *vide* proceedings no.647, dated 12.01.2001; and, the petitioner paid an amount of Rs.11,993/- by way of a Demand Draft dated 24.04.1996 drawn in favour of the Assistant Accounts Officer/E.R.O./Kasibugga. Thus, the matter attained finality. The present matter is covered by the provisions of the old Electricity Act, 1910, is not in dispute. However, ignoring the earlier proceedings, which have attained finality, and after lapse of two months, the same Superintending Engineer/ Assessments/Visakhapatnam, sent another show cause notice, dated 07.11.2000, *vide* letter No.434, again asking the petitioner to send his objections for final assessment of Rs.4,80,663/-. The said show cause notice/letter, as per the material record, was served on the petitioner on 18.03.2001 by which time the Superintending Engineer/ Assessments/Visakhapatnam, has already completed the assessment and passed final orders in letter No.647 dated 12.01.2001. Therefore, the very second show cause notice/letter calling for the objections of the petitioner for final assessment once again appears to be clearly antedated. The petitioner also submitted his objections to the Superintending Engineer/Assessments/Visakhapatnam on 12.04.2001 enclosing a copy of the earlier final assessment proceedings issued pursuant to the earlier/first show cause notice. The same was received by the Superintending Engineer/Assessments/Visakhapatnam as per the postal acknowledgement available in the material record. However, the Superintending Engineer/Assessments/Visakhapatnam made final assessment by order, dated 23.03.2001, which, according to the

petitioner, is also antedated; and it is served on the petitioner on 12.05.2001. Thus, the second proceeding was once again issued by the same Superintending Engineer/Assessments/Visakhapatnam assessing the amount to be paid by the petitioner at Rs.4,80,663/- after the same Superintending Engineer/Assessments/ Visakhapatnam had come to a conclusion that the final assessment shall be Rs.11,993/-. In the second show cause notice and in the second proceedings, there is no mention of the first show cause notice and the first proceedings. Therefore, the aggrieved writ petitioner filed an appeal. The appellate authority supported the orders of the preliminary authority by stating that by oversight while finalizing the proceedings against earlier show cause notice vide letter No.708 dated 13.05.1999, the final orders were issued vide proceedings No.SAT/9884/D.No.647 dated 12.01.2001 for Rs.11,993/- plus other charges as similar to the provisional assessment notice issued by the Assistant Divisional Engineer, Operations, Palasa erroneously without taking the revised show cause notice, dated 07.11.2000, into cognizance, which is erroneous and due to oversight. Thus, for the said reasons, the appellate authority supported the second show cause notice and the second proceedings of the first respondent. In the said orders, it was also verbatim averred as follows: "While issuing revised show cause notice 434 dt:07.11.2000 the estimated units calculated on computed basis and the units recorded in the meter for the assessment period of one year were not deducted under the impression that as the meter bypassed in the 3 phases and hence no chance to record consumption in the meter and hence the entire

estimated units on computed basis taken into consideration for assessment. But the recorded consumption in the meter and billed in every month during assessment period from 18.04.95 to 17.04.96 might have given by AE/O while furnishing the readings to avoid suspecting pilferage.” While giving benefit of doubt he called upon the writ petitioner/consumer to pay Rs.2,90,818/- less the amount already paid, as already narrated. However, from the material on record, it appears that after the assessment was once finalised vide proceedings No.647, dated 12.01.2001, for Rs.11,993/-, ignoring the same, the second show cause notice was issued with date 7.11.2000; however, the same was served on the petitioner/consumer on 18.3.2001. But, the same was supported by the appellate authority by giving different reasons which are not the subject matter of the proceedings issued by the first respondent and which are impugned in the appeal. Thus, the appellate authority had acted contrary to the facts and law by conveniently ignoring to mention in its proceedings, the proceedings in letter No.647, dated 12.01.2001, assessing the amount to be paid as Rs.11,993/-. Further, the second assessment order with date 23.03.2001 was served on the petitioner-consumer on 12.05.2001. Therefore, the material on record reflects that all the subsequent proceedings were antedated. The respondents not only acted unfairly in antedating the second show cause notice and later assessment proceedings but also could not show any provision by which the respondents concerned can exercise the power to issue a second show cause notice when the final orders are passed after first show cause notice.

8. Viewed thus, this Court finds that there is merit in the writ petition and the proceedings, dated 23.03.2001, *vide* No.SAT.9942/SKL/D.TKL/PSA/P/F.704/D.No.818, issued by the first respondent, which are affirmed by the 3rd respondent in proceedings No.CGM/O&CS/EPDCL/VSP/O&M-II/P.F.Case/D.No.1556/2007, dated 20.04.2007, cannot be sustained being illegal and contrary to facts and law.

9. In the result, the writ petition is allowed as prayed for.

There shall be no order as to costs.

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

30th January, 2017

M.Seetharama Murthi, J

Note:-

Furnish C.C. by 10.03.2017.

(B/O) Bvv

