

HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

\*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ WRIT PETITION No.36050 OF 2016

%14.07.2017

#Between:

Gampa Srinivas and another

...Petitioners

AND

1. The State of Telangana,  
Energy Department rep. by its Principal Secreatry  
And 4 others

... Respondents

!Counsel for the petitioners : Sri V.V.N.Narayana Rao

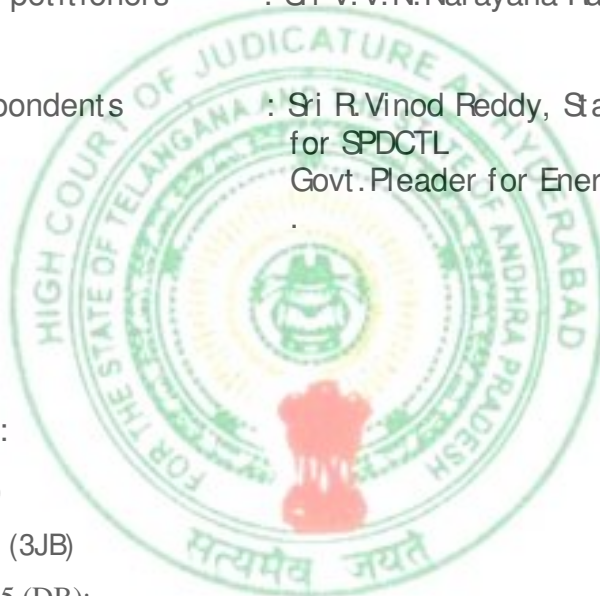
Counsel for Respondents : Sri R.Vinod Reddy, Standing Counsel  
for SPDCTL  
Govt.Pleader for Energy

<Gist :

>Head Note:

? Cases referred:

- <sup>1</sup>. 2014 6 ALD 129
- <sup>2</sup>. 1995 2 SCC 648 (3JB)
- <sup>3</sup>. 2001(4) ALD-115 (DB):
- <sup>4</sup>. 1998(5) ALD 637
- <sup>5</sup>. 2009 1 SCC 210
- <sup>6</sup>. AIR 2007 SC 2
- <sup>7</sup>. AIR 2004 SC 2171
- <sup>8</sup>. AIR 1963 SC 1150



## HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.36050 OF 2016ORDER:

Heard P.Sri Raghuram, the learned senior counsel, representing the counsel for the petitioners and also the learned Govt. Pleader for Energy representing the 1<sup>st</sup> respondent and Sri R.Vinod Reddy, learned Standing counsel for the respondents 2 to 5 and perused the prayer in the Writ Petition, supporting affidavit and order in previous W.P.No.7115 of 2014 dt.21.07.2015, the provisions particularly condition No.8-4 of the general terms of power supply and also perused the propositions placed reliance by both the sides.

The prayer in the writ petition reads that:-

“to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the Letter No.AE/ OP/ UPL/ RR East/ F/D.No.3163/2016-17, dated 13.10.2016 on the file of the 5<sup>th</sup> respondent is illegal, arbitrary and in violation of Article 14 of the Constitution of India and also contrary to the GTCS conditions and also contrary to the order in W.P.No.7115 of 2014 dated 21.07.2015 and set aside the same and consequently direct the respondents to provide additional load to the Service Connection No.140243606 for the premises bearing No.24-60/ 12 Part, IDA, Uppal and pass such other order or orders as this Hon'ble Court deemed fit and proper in the circumstances of the case.

2. Supporting affidavit of the 1<sup>st</sup> petitioner speaks that they are the purchasers of two plots admeasuring 920sq. yards from one M.Madhusudan Reddy, who is the Proprietor of M/s Arkay Industries and also Managing Director of another company M/s Maks Casting Private Limited, who purchased the same from M/s Sri Rama Potters Industrial Co-operative Society Limited, IDA Uppal, Hyderabad under registered sale deed, dt.14.08.1998 and said Maks Casting Pvt.Ltd. availed loan from Andhra Bank by mortgaging the above two plots and having failed to repay, for discharge of the debt with the consent of the bank, the owner of the plots i.e. M.Madhusudhan Reddy, when offered to sell, the petitioners purchased

the same. It is also averred that said Madhusudhan Reddy addressed a letter to 3<sup>rd</sup> respondent-Southern Power Distribution Company of Telangana Limited (for short, 'SPDCTL') represented by its Superintending Engineer giving three months notice for termination of HT agreement with him and the 3<sup>rd</sup> respondent issued a letter dated 18.07.2013, by giving effect to the termination from 08.10.2013 or from any subsequent date of its disconnection whichever is later and the service was disconnected consequently by recording the final readings. The affidavit further shows that the petitioners applied for a new service connection under commercial category on 28.01.2014 but the same was rejected by letter, dt.20.02.2014 stating that on field inspection, it was noticed that there was HT service connection earlier existing and there were outstanding dues thereon which are to be cleared. Impugning the same the petitioners filed above referred writ petition 7115 of 2014 where it was ordered on 21.07.2015 as follows:-

“To issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings bearing No. AE/ ICSC/ HBG/ F.NSC/ D.No.2343 dated 20.02.2014 issued by the 4<sup>th</sup> respondent in respect of premises bearing P.No.C-8/ 2-A/ 5, IDA, Uppal, Hyderabad, as illegal, arbitrary, violative of Articles 14 and 21 of the Constitution of India by setting aside the same and consequently, direct the respondents to forthwith fix meter in premises bearing P.No.C-8/ 2-A/ 5, ID, Uppal, Hyderabad against registration No.NR908141043509 by effecting supply of energy”

3. It is the averment that for non-compliance with the above order CC No.2063 of 2015 filed by the petitioners and the respondent filed Writ Appeal with more than 6 months delay impugning the said writ petition order dated 21.07.2015 and the same is pending. The respondents issued service connection No.140243606 after filing of the Contempt Case supra.

4. It is averred that the petitioners applied for additional load to their premises with contract load 55000 watts on 17.06.2016 for the premises consisting of 5 storied building and also paid a required fee however there is no response from the respondents which made the

petitioners to file W.P.No.32092 of 2016 that was disposed of by order dated 21.09.2016 directing the respondents to dispose of the petitioners application as per the Electricity Act, 2003 and the Rules made thereunder and the petitioner therefrom made representation dated 03.10.2016 and the 5<sup>th</sup> respondent-Asst. Engineer rejected the said representation/ request on the ground that new electricity connection cannot be granted to the premises without clearing old dues of the earlier HT service connection vide letter dt. 13.10.2016 though condition No.8.4 of GTCS has no application to the petitioners and that was also the substance of the order in W.P.No.7115 of 2015, dt.21.07.2015. It is further averred that the rejection of the petitioners request for additional load invoking condition No.8.4 supra is unsustainable and they have to consider as per condition No.5.2.1 of GTCS once applied for new connection or additional load by disposal within timeframe and thereby sought for declaration of said rejection letter of 5<sup>th</sup> respondent as illegal and unconstitutional and consequently to suspend the same pending disposal of the writ petition and pass such other orders.

5. The counter affidavit filed by the 4<sup>th</sup> respondent-Asst. Divisional Engineer (Operations), Uppal is with the contentions that the said Madhusudhan Reddy of Maks Casting Pvt.Ltd. was having HT Sc.No.PRE 857 and requested for its termination on 08.07.2013 and it was terminated from his request on 08.10.2013 from his three months notice and the supply was in fact disconnected on 29.07.2013 by recording final reading and as per which a sum of Rs.33,68,212/- is due from said consumption and there was a demand to him to pay the same on 21.12.2013 by its letter, the petitioners purchased the same property from said Madhusudhan Reddy and when the petitioners applied for new service connection on 5 KW on 28.01.2014, the same was rejected on 10.02.2014 for the amount due not

cleared of the earlier HT Service connection and when the Court directed in W.P.No.7115 of 2014 by order, dt. 21.07.2015, the unnumbered writ appeal with WASR No.218220/ 2015 filed by the respondents and the same is pending after service of notice to the writ petitioners as respondents therein earlier service connection was released and again for 5 new service connections each 15 KW load applied on 17.06.2016 and during pendency, the petitioners herein filed W.P.No.32092 of 2016 that was disposed of with a direction to dispose of the application of the writ petitioners and the same was disposed of and stating without clearing arrears, new electricity service connections cannot be granted.

6. It is further averred that the petitioners purchased the property in question from said Madhusudhan Reddy, but not from the secured creditor bank, through sale deed dated 26.08.2013 where clause-6 reads the vendors have paid the property tax and other charges in respect of the schedule property to the concerned authorities up-to-date and vendees can pay the same hereinafter from date of sale and in case any tax or charges still due to anybody in respect of the property, same shall be paid by the vendors by indemnifying themselves to vendees for such claims whatsoever made by any appropriate authority with respect to any unpaid dues and thereby the petitioners as vendees have to pay the dues and recover from the vendors to get the additional load sought for in the present Writ Petition. It is further averred that the order in W.P.No.7115 of 2017 dt.21.07.2015 is *subjudice* since Writ Appeal filed is pending that has not reached any finality. Further, it is not a new service connection but for additional load which the petitioner applied and not entitled. The counter affidavit also reproduced clause 5.9.4 and 6 of GTCS providing consumer to terminate after minimum period of agreement with an advance notice of not less than one month and the company can terminate at any time by



giving one month notice on any violations of the terms of agreement of GTCS of the provisions of any letter touching agreement and provisions of the Act and the Rules made thereunder. On termination of LT/HT agreement of the department is entitled to dismantle the service line and remove material. The agreement executed by Maks Casting Pvt.Ltd. is deemed to be terminated and any application received for extension of supply to the premises will be treated as fresh application, provided there are no dues against the previous service connection to consider since clause 8.4 of GTCS requires the seller of property to clear all dues before sale but in case of failure the discum may refuse to supply electricity. The petitioners should have taken precautions to verify about dues of the earlier service connection from the vendor of the property and as per the sale deed terms even the vendees can pay and recover the charges from the vendor and without that the respondents-company shall not be deprived of the legitimate dues from the consumers, else it cause huge financial loss and thereby the writ petition is liable to be dismissed.

7. Pursuant to the above, from the hearing of respective counsel, the point to consider is:-

*Whether the refusal by the respondents of the additional load sought for by the petitioners, is unjust by any and a condition of the release arises only after payment of the arrears by the vendor of the property?*

8. In fact, in the unnumbered writ appeal with a delay condonation filed pending against the order in W.P.No.7115 of 2014 dt. 21.07.2015, there is no stay suspending the operation of the same. The order reproduced above clearly speaks that the respondents shall provide service connection to the petitioners leaving it open to the respondents to recover the outstanding amount through due process of law by making the said

defaulter Madhusudhan Reddy as well as the petitioners as parties to the proceedings and inapplicability of condition 8.4 to the petitioners also left open thereby however in the meantime, the petitioner shall be given service connection required by them subject to the payment of actual consumption charges and usual charges. The Court referred the judgment in Dhanalakshmi Iron Industries Limited Vs. CPDCAP Ltd.<sup>1</sup>, where the application of condition No.8.4 was considered holding that the said condition casts obligation on vendor of the property to clear the dues however it will not prevent the authorities from taking recourse once by virtue of the Writ Petition order, the service connection is ordered to be released and by left open to the respondents to proceed against the said Madhusudhan Reddy, the defaulter for the arrears of the earlier H.T. connection and if at all also by array of the petitioners herein as respondents with Madhusudhan Reddy(the defaulter) to such proceedings for recovery, and the same analogy applies to the case on hand in the present Writ Petition for the additional load, needless to say both are subject to the result of writ appeal.

9. Apart from it, so far as the liability of the vendee for the arrears of the vendor if at all concerned, the Apex Court in *M/s Isha Marbles Vs. Bihar State Electricity Board*<sup>2</sup> held that in the absence of contract to the contrary sale of the property by the State Finance Corporation of the premises for which supply of electricity disconnected for non-clearance of consumption charges by the previous owner-cum-consumer, auction purchaser would not be liable to meet the liability of the previous consumer to secure re-connection and what are the remedies of the Board if the consumer failed to pay concerned, resort could ought to Section 24 of the

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<sup>1</sup> 2014 6 ALD 129

<sup>2</sup> 1995 2 SCC 648 (3JB)

Electricity Act, where the consumer neglects to pay any charges for energy due from him to a licensee the consumer neglects to pay sums other than charges for energy due from him to the licensee, and in such a case, the licensee may after giving consumer a written notice not less than 7 clear days of cutting, for the supply and continue to supply till the consumer pays the sum or sums due and no doubt that recourse to Section 24 supra of the Code not the only remedy as otherwise suit as a general remedy and to recover also maintainable. There is no charge over the property for the dues failed in paying by the previous owner to make the subsequent auction purchaser liable when the auction purchaser seeks supply of energy, he cannot called upon to clear the past arrears by making a condition precedent would matters is the contract entered into by erstwhile consumer with the Board. The Board cannot seek enforcement of such contractual liability against the 3<sup>rd</sup> party. It was also held no doubt that a dishonest consumer cannot be allowed to play tyrant with the public property but inadequacy of the law can hardly be a substitute for over-jealousness.

10. The proportion supra also relied upon by a Division Bench of this Court in Vijayalakshmi Enterprises Vs. Asst. General Manager, APFC, Hyderabad and others<sup>3</sup> in holding that purchaser of the Unit, sold by the State Finance Corporation, for recovery of arrears due to the SFC, cannot be made liable to pay the dues to the Central Excise Department, in the absence of contract to the contrary and for that conclusion also referred the earlier expression in Stani Textiles & Fabrics Pvt.Ltd. Vs.Asst.Collector of Customs and Central Excise<sup>4</sup>

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<sup>3</sup> 2001(4) ALD-115(DB):

<sup>4</sup> 1998(5) ALD 637



11. Further to the above, the Apex Court in Paschimanchal Vidyut Vitran Nigam Ltd. Vs. DVS Steels and Alloys Pvt.Ltd.<sup>5</sup> held that in the absence of contract to the contrary, the electricity supplier cannot recover dues of earlier predecessor-in-title or possession from the purchaser as there is no privity of contract. The supplier of energy can impose such terms and conditions to regulate its transactions which are not arbitrary and unreasonable. However if the purchaser has agreed to deposit the dues of his predecessor on pro-rata basis, said purchaser is estopped from claiming the amount back but its refund would be subject to the outcome of the dispute, if any, pending with vendor of the premises and the supplier. It was so held by interpreting section 50 of the Electricity Act, 2003 and Clauses 4.3(g) and (h) of the Supply Code. At paras-14 and 15 of the expression supra, it is also observed that it is the duty of the purchaser or occupant of premises to satisfy themselves that there are no electricity dues before purchasing or occupying the premises and they can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/ lessor responsible for clearing electricity dues up to the date of sale or lease and for indemnity in the event they are made liable.

12. Even this decision in Paschimanchal supra nowhere says the earlier service connection once disconnected by termination of the contract/ license for the arrears due, subsequent bonafide purchaser, if any, can be made liable for release of new service connection or additional load, but for to say from the expression in Paschimanchal supra of the transfer is a fraudulent one, the recovery process on the property covered by the sale is no way be interdicted as those clearly observed the duty of vendor to make bonafide enquiry as to any arrears due. The expression of the Apex

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<sup>5</sup> 2009 1 SCC 210

Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. M/s Paramount Polymers Pvt.Ltd.*<sup>6</sup> not an authority in either way since the matter was remanded to the Division Bench of the High Court. The other expression of the Apex Court in *Ahmedabad Electricity Company Ltd. Vs. Gujarat Inns Pvt.Ltd.*<sup>7</sup> reiterated the principle laid down in *Isha Marbles supra*. It is needless to say who is a bonafide purchaser and when a transfer is fraudulent and what enquires the purchaser to make are laid down by the Apex Court in *Abdul Shakors Vs. Arji Papa Rao*<sup>8</sup>. It is in fact referring to the expressions of the Apex Court in *Isha Marbles*, *Dakshin*, *Ahmedabad*, and *Paschimanchal supra*, among others in *Dhanalaxmi Iron Industries supra*, it was held by the learned Single Judge, by the order in W.P.No.7115 of 2014 dated 21.07.2015, that the condition No.8.4 of the general terms and conditions speak that the seller of the property should clear all dues to the company before selling such property. If the seller did not clear the dues as mentioned above, the company may refuse to connect electricity supply to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the company are cleared. It is by referring to it, the Court observed that the condition No.8.4 obligates the seller of the property to clear all the dues to the company before selling such property and if the seller fails to pay the dues, the company may refuse electricity supply to the premises through the already existing connection or refuse to give a new connection to the premises till all dues of the company are cleared and the responsibility is caste on the seller and in case of sake of a sick unit, the seller would be incapable of complying with the above term. However, the said condition does not disable the company from recovering the dues when the arrears

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<sup>6</sup> AIR 2007 SC 2

<sup>7</sup> AIR 2004 SC 2171

<sup>8</sup> AIR 1963 SC 1150

became due and before the unit was sold. The company cannot keep quiet and try to recover the dues from the purchaser and the issue of limitation also crops up for consideration.

13. It is pursuant to which the order in W.P.No.7115 of 2014, dt.21.07.2015 while ordering to release new connection to the petitioners, it is observed of remedy is left open to the respondents to take a legal recourse against said vendor and the petitioners for recovery of the arrears of amount due. Once such is the case, there is nothing to refuse the additional load sought for by the petitioners.

14. Having regard to the above and in the result, the Writ Petition is allowed while directing the respondents to give additional load on the same analogy of earlier new connection given, within two months from the date of receipt of a copy of the order by collection of the usual charges. This order is no doubt made clear of subject to the result of the unnumbered Writ Appeal pending so that any further recourse if at all is subject to the writ appeal result. It is needless to say the petitioner if not shown as a bona fide purchaser, it is for the respondents to proceed against the property in the hands of the petitioner as those are the matters to be dwelled into in the event of the recourse suggested in the order of the W.P.No.7115 of 2014 in the operative portion.

15. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.07.2017

Note: L.R.Copy to be marked.

b/o. vvr.