

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11676 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the impugned demands raised by the second respondent in Lr.No.SE/OP/RRC/N/SAO/HT/D.No.61/2006 dated 06.12.2006 and Lr.No.SE/OP/RRC/N/SAO/HT/D.No.194/07 dated 24.02.2007 and the subsequent Letter No.SE/OP/RRC/N/SAO/HT/D.No.248/07 dated 7/12.04.2007, as illegal, arbitrary and contrary to Section 56(2) of the Electricity Act, 2003 (for short 'the Act').

2. The case of the petitioner is that the petitioner availed High Tension power supply from the APSE Board for a CMD of 1500 KVA for his industry under the name and style of 'M/s.Aditya Steel Industries' at Medchal Industrial Estate, R.R. District. In view of the scarcity of power, the APSEB imposed restrictions on usage of power on High Tension consumers vide B.P.Ms.No.493, dated 14.04.1987 with effect from 15.04.1987. As per the said restrictions, the High Tension consumers shall not exceed 40% of the sanctioned load. The Board also issued guidelines vide B.P.Ms.No.505, dated 20.04.1987, for arriving at the basis for fixing the quotas. When the Board issued a bill for a sum of Rs.7,24,431/- towards penalty for the month of May, 1987 on the ground that quota for the petitioner unit was fixed at 'Nil'

and that petitioner exceeded the 'Nil' quota, questioning the said bill, the petitioner filed Writ Petition No.8330 of 1987. This Court disposed of the said writ petition on 25.06.1987 directing the petitioner to pay a sum of Rs.70,000/- within two weeks and a further sum of Rs.50,000/- within two weeks thereafter and directed the APSEB to revise and refix the quota. Thereafter, no quotas were communicated to the petitioner obviously in view of the lifting of restrictions subsequently.

3. The petitioner filed additional affidavit stating that an amount of Rs.6,04,431.70 Ps. claimed in the billing month of May, 1987, was the subject matter of Writ Petition No.8330 of 1987. As per the directions of this Court, he paid Rs.1,20,000/- and filed letter for proper revised bill. But, the respondents have not fixed any liability by showing as to how much energy he utilized in violation of the quota. As there was quantity of energy shown as utilized over and above the quota, the claim of Rs.6,04,431.70 Ps. is illegal and the respondents are bound to refund the amount of Rs.1,20,000/- deposited with interest at 18% p.a. The amounts of Rs.45,825.05 Ps. and Rs.27,675/- shown as less paid against the demands in March, 1991 and March, 1993 respectively is false. He paid the total demand amount. The sum of Rs.3,85,770.10 Ps. is shown as due as interest on service line charges in the year 1996, is false and baseless. The supply was taken on 30.03.1987 by paying the service

line charges and without payment of service line charges, the respondents would not have charged the line or they would not have kept quite for about nine years without demand or would have included in the demand of Rs.29,15,547/- claimed during October, 1996 towards interest surcharge. The amount of Rs.20,05,297/- claimed under C.C. Bills of December, 1997, is not correct. The bill amount of December is claimed as Rs.16,73,113/- only. The amount of Rs.22,09,683/- claimed as due for January, 1998, is also not correct and the said amount is shown as Rs.20,09,683/- in the Letter dated 06.11.2006. It is further submitted that the bill for the month of February, 1998, a sum of Rs.5,65,757.25 Ps. is claimed as late payment charges during October, 1996 to June, 1997 and during the said period, a sum of Rs.29,15,547/- was claimed and the same was paid, and therefore, this further claim is false and baseless. The minimum charges claimed during the month of March, April, May and June, 1998 is illegal as power was disconnected on 09.02.1998 without notice. Except the demand in December, 1997 for Rs.16,73,113/- and January, 1998 for Rs.20,09,683/- and February, 1998 for Rs.10,65,434/- - totalling Rs.49,48,230/-, the rest of demand is illegal and towards the said amount, there is a consumption deposit of Rs.15,95,886/- and Rs.15,00,000/- deposited pursuant to the interim orders of this Court.

4. The second respondent filed counter stating that the C.C. bills for the month of May, 1987 was issued for an amount of Rs.7,24,431/- which includes penalty of ten times for exceeding quota of M.D. and Energy as per B.P.Ms.No.494, dated 14.04.1987. During the power restriction period in force, the consumers are governed by the power cuts and shall be billed as per Tariff rate, applicable provided they do not exceed the quota fixed and without prejudice to the right to disconnect the power supply. The Board will also bill the energy and maximum demand utilized in excess of quota fixed, at 10 times the tariff applicable as per B.P.Ms.No.493, dated 14.04.1987. This Court in W.P.No.8330 of 1987 dated 25.06.1987 has directed the petitioner to pay Rs.70,000/- and Rs.50,000/- and remanded the case to APSEB for reconsideration. As per the Court directions, the Member Secretary of APSEB has to consider the appeal given by the consumer. Hence, the balance amount of Rs.6,04,431.70 Ps. is still outstanding. Further, the consumer was due of C.C. bills for the month of October, 1996 to April, 1997 for an amount of Rs.27,21,867/- and approached this Court for restoration of power supply. This Court vide order dated 20.05.1997, has disposed of the case on the ground that supply to petitioner industry shall be restored on payment of Rs.13 lakhs. The petitioner has paid the following amounts as the orders of this Court were

complied with the power supply to the petitioner was restored:

Rs.13,00,000/- - paid on 10.07.1997

Rs.4,00,000/- - paid on 25.08.1997

Rs.4,00,000/- - paid on 10.10.1997

Rs.6,21,867/- - paid on 16.01.1998

5. The second respondent filed additional counter-affidavit stating that a letter dated 24.02.2007 was issued to the petitioner company furnishing details of outstanding dues for arranging balance payable amount of Rs.65,69,544.75 Ps. after adjustment of available deposit of Rs.15,95,866/-. The C.C. bill for the month of May, 1987 was issued for an amount of Rs.7,24,431/- which includes penalty of ten times for exceeding the quota of MD and Energy as per B.P.Ms.No.493, dated 14.04.1987. During the power restriction period in force, the consumers are governed by the power cuts and shall be billed as per tariff rate applicable provided they do not exceed the quota fixed and without prejudice to the right to disconnect the power supply. The Board will also bill the energy and maximum demand utilized in excess of quota fixed at 10 times, the tariff applicable as per B.P.Ms.No.493, dated 14.04.1987. This Court in W.P.No.8330 of 1987, dated 25.06.1987, has directed the petitioner to pay Rs.70,000/- and Rs.50,000/- and remanded the case to erstwhile APSEB for reconsideration. As per the Court directions, the member of erstwhile APSEB has to

consider the appeal filed by the consumer. Hence, the balance amount of Rs.6,04,431.70 Ps. was outstanding. It is true that an amount of Rs.45,825/- and Rs.27,675/- is due against C.C. bills of March, 1991 and March, 1993 and the same was intimated to the petitioner company vide letter dated 24.02.2007 and it is still outstanding. An amount of Rs.3,85,770/- was due towards interest on service line charges and it is still outstanding. The C.C. bill for the month of December, 1997 for an amount of Rs.20,05,297/- of the petitioner company is due. The amount of Rs.22,09,683/- is due by the petitioner company towards C.C. bill of 01/1998. The said amounts were already intimated to the petitioner company. The respondent has not raised any bills without any amount due. The petitioner company approached this Court against notice issued by his office vide Lr.No.SE/OP/RRC/N/SAO/HT/D.No.248/07 dated 07/12.04.2007 and obtained interim direction to the respondents in W.P.No.11676 of 2007 dated 07.06.2007 not to disconnect power supply to the petitioner's residential house on condition that the petitioner deposits a sum of Rs.15 lakhs. After payment of Rs.15 lakhs, the balance amount of Rs.50,69,545/- is still pending. The petitioner is liable to pay the applicable surcharge for the delayed payment. It is further submitted that a letter No.SE/OP/RRC/N/SAO/HT/D.No.1941/07 dated 24.02.2007 was issued to the petitioner furnishing the details

of outstanding dues to a tune of Rs.81,65,430.75 Ps. which includes the C.C.bill for the month of December, 1997 for Rs.20,05,297/- and the balance payable amount is Rs.65,69,544.75 Ps. The receipt dated 27.01.1998 for the cheque bearing No.651514 dated 20.01.1998 was issued by the Senior Accounts Officer/Operation/Circle, R.R. District for a sum of Rs.20,05,297/- for the C.C. bill of December, 1997. But the said cheque bearing No.651514 dated 20.01.1998 was dishonoured on 02.02.1998 for insufficient funds in the account and the same has been debited against the consumer account. The statement of account showing the entry (cheque returned) is also filed.

6. Sri M.P. Chandramouli, learned counsel for the petitioner, would contend that the petitioner availed High Tension power supply from APSEB for a CMD of 1500 KVA for his industry. The APSEB imposed restrictions on usage of power on H.T. consumers vide B.P.Ms.No.493, dated 14.04.1987 with effect from 15.04.1987. As per the said restrictions, the H.T. consumers shall not exceed 40% of the sanctioned load. The Board also issued guidelines vide B.P.Ms.No.505 dated 20.04.1987 for arriving at the basis for fixing the quotas. The Board issued a bill for a sum of Rs.7,24,431/- towards penalty for the month of May, 1987 on the ground that quota for unit was fixed at 'Nil' and the petitioner exceeded the 'Nil' quota. The petitioner filed Writ

Petition No.8330 of 1987 challenging the bill. This Court disposed of the writ petition on 25.06.1987 directing the petitioner to pay Rs.70,000/- within two weeks and Rs.50,000/- within two weeks thereafter and directed APSEB to revise and refix the quota and thereafter, no quotas were communicated to the petitioner obviously in view of lifting of restrictions subsequently. For non-payment of C.C. charges for the month of October, 1996, the power supply was disconnected. The petitioner filed Writ Petition No.10944 of 1997 for restoration of power supply. This Court disposed of the said writ petition by order dated 20.05.1997 directing payment of the arrears of Rs.27,21,867/- in four instalments. The power supply was directed to be restored on payment of Rs.13 lakhs. A sum of Rs.4 lakhs was directed to be paid within six weeks and thereafter a further sum of Rs.4 lakhs was directed to be paid after six weeks and thereafter the balance amount was directed to be paid within two months. Due to adverse market conditions, the petitioner could not pay the consumption charges for the month of December, 1997 and January, 1998 and for non-payment of C.C. charges, the power supply was disconnected on 09.02.1998. The second respondent issued a notice dated 11.05.1998 for termination of the agreement on the ground of non-payment of C.C. charges. The petitioner requested the respondent for temporary deration of CMD from '1500 KVA' to '0' (zero). The Board vide letter dated 21.12.1998 informed that H.T.

agreement dated 31.12.1986 is terminated w.e.f. 11.06.1998 and the petitioner was directed to pay a sum of Rs.65,69,544.85 Ps. towards arrears. The petitioner vide letter dated 12.01.1999, requested the second respondent to keep the termination of H.T. agreement in abeyance, but the same was rejected by letter dated 09.02.1999 of the respondent. In view of the termination of the agreement, it is informed to the respondents that no amounts need be payable as security deposit and additional security deposit amounts lying with the respondents would be sufficient to meet the arrears, if any, for which the second respondent vide letter dated 06.12.2006 informed the petitioner about the dues payable in respect of their service is Rs.65,69,545/- and requested to arrange payment stating that the supply was disconnected on 09.02.1998 for payment of C.C. dues and that the agreement was terminated w.e.f. 11.06.1998. Though no amounts are payable as on 19.05.2007, the second respondent is going to initiate recovery proceedings under Revenue Recovery Act. The learned counsel finally argued that the impugned demands are contrary to Section 56(2) of the Act and unenforceable.

7. Sri R.Vinod Reddy, learned Standing Counsel for the respondents, would contend that since May, 1987, the petitioner is not regular in payment of the bills and several bills were raised and on one occasion the petitioner paid the part payments. All the payments made by the petitioner were

taken into consideration and duly accounted for and ultimately the letter dated 24.02.2007 was issued to the petitioner furnishing the details of outstanding bills to a tune of Rs.81,65,430.75 Ps. which includes C.C. bill for the month of December, 1997 for Rs.20,05,297/-. The balance payable amount is Rs.65,69,544.75 Ps. As the cheque issued for Rs.20,05,297/- for the C.C. bill of December, 1997 was dishonoured on 02.02.1998 after adjusting all the amounts, the balance outstanding amount of Rs.50,69,545/- is payable by the petitioner. It is further contended that the recovery of the bills are not barred by the provisions of Section 56(2) of the Act as the bills are frequently raised.

8. In the facts and circumstances of the case and in considered view of this Court, the C.C. bills are pertaining to the year 1987 onwards till the termination of the agreement on 21.12.1998. Thereafter, no bills were raised, much less indicating the arrears of dues in the C.C. bills, except the impugned notices. The power supply was disconnected on 09.02.1998 in spite of part payment of the bills as per the orders of this Court. Hence, the impugned demand of payment of electricity bills raised by the respondents is barred by limitation and not recoverable under Section 56(2) of the Electricity Act, 2003. The Section 56(2) of the Act reads as under:

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The alleged dues could not be recovered under the provisions of Andhra Pradesh Revenue Recovery Act and under Section 6 of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984.

9. Therefore, the impugned demand notices raised by the second respondent in Lr.No.SE/OP/RRC/N/SAO/HT/D.No.61/2006 dated 06.12.2006 and Lr.No. SE/OP/RRC/N/SAO/HT/D.No.194/07 dated 24.02.2007 and the subsequent Letter No. SE/OP/RRC/N/SAO/HT/D.No.248/07 dated 7/12.04.2007, are set aside by holding that the same are barred by limitation and issued contrary to Section 56(2) of the Act and unenforceable.

10. Accordingly, the Writ Petition is allowed. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 11676 OF 2007

02-05-2018

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