

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.31437 of 2015

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief/ s:

“...to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents particularly the 5th respondent in permitting and allowing the unauthorized persons to draw power supply through the transformer installed exclusively for petitioner's service connection and the service connection of another at Chinapavani Village, Lingasamudram Mandal, Prakasam District and in not responding to the notice dt.09-07-2015 to attend his grievance as highly illegal, arbitrary and contrary to law and consequently direct the respondents to see that the power is supplied to the authorized two service connections only through the said transformer and further direct the respondents to make good the damage caused to the petitioner in view of their illegal action and pass such other order or orders...”

2. I have heard the submissions of *Sri Sritharan Telaprolu*, learned counsel appearing for the petitioner and of *Sri N. Siva Reddy*, learned standing counsel appearing for the respondents. I have perused the material record.

3. The case of the petitioner, in brief, is as follows: -‘On the request of the petitioner and one Shaik Khaja Hussain for supply of power to their respective agricultural service connection nos.4513125000220 and 4513125000221, the respondents, after collecting the estimated amount respectively payable by them, installed a transformer at their fields exclusively for supply of power to those two service connections. Since the installation of the transformer in the year 2009, the petitioner and the said other person are drawing power from the said transformer through the respective service connections. The capacity of the transformer was increased to 15 HP after collecting additional amount of Rs.2,245/- in the month of November, 2013. The petitioner and the other person were permitted to draw power at 7.5 HP each from the 15 HP

transformer. Accordingly, they both were drawing power proportionately for running their motor pump sets provided for raising crops in their lands. The transformer was installed exclusively for the service connections of the petitioner and the said other person after collecting the necessary estimated amounts from them. No other person has any right to draw power or make a claim for drawing power or for supply of power through the said transformer. While so, the Assistant Engineer, Operation, 5th respondent herein, who had no jurisdiction over the area of operation of Gudluru section, without any authority, gave service connection to one D. Venkata Ramanaiah for drawing power through the said transformer, which is exclusively installed for the service connections of the petitioner and the said other person and thereby burdened the transformer with overload. In view of the overloading, the motor pump set of the petitioner was burnt and was spoiled. Hence, for lack of water, damage was caused to the existing crop; and, the petitioner is unable to raise crops in his lands; and, the land has become a waste land; and, the petitioner is facing financial difficulties. By a legal notice, dated 09.07.2015, the petitioner reported the matter to the respondents. Despite receiving the said notice, on 13.07.2015, there was no response from them. Hence the writ petition is filed.'

4. On 01.10.2015, this Court having admitted the writ petition, granted the following interim order in WPMP.No.40642 of 2015: '..In the circumstances, the respondents are restrained from allowing the third parties from using the transformer for drawing power if the transformer was erected exclusively for the benefit of the petitioner.'

5. The respondents filed WMP.No.3118 of 2017 along with the counter affidavit of the Assistant Engineer (Operation) concerned requesting to vacate the afore-said interim order. The case of the respondents as stated therein, in brief, is as follows: - 'The allegation that the transformer was installed exclusively for the service connections of the petitioner and another Sk.Hussain

is false. APSPDCL at the request of the writ petitioner and another released power supply by collecting required charges and installing a transformer, which is the exclusive property of the Company. Simply because the power supply is given to the petitioner and another by installing a transformer, the APSPDCL does not cease to be the owner of the same. The petitioner cannot claim exclusive right over the transformer. The writ petitioner originally applied for release of power supply to his motor pump set of a capacity of 5 HP. On inspection, it was found that he exceeded the contracted demand. Hence, a notice was issued for enhancement of the capacity of the contracted load by paying additional deposit. The writ petitioner agreed for enhancing the contracted load and paying additional deposit; and, accordingly orders were issued enhancing the contracted load to 7 HP after collecting the additional amount. Since the transformer is not exclusive for the service connections of the petitioner and the said other person and as it is the property of the Company, the contention that no other person has a right to draw or claim to draw or seek supply of power through the said transformer is untenable under facts and in law. The petitioner has not filed any document in support of his contentions. Under the provisions of 'General Terms And Conditions Of Supply Of Distribution And Retail Supply Licensees' there cannot be any exclusive use of the transformers by any single or double consumers. Clause 5.3.2.2 of the said general terms and conditions reads as under:

5.3.2.2 Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s).

The above provision falsifies the claim and case of the petitioner. The respondents never authorised the writ petitioner or anybody to use the transformer. The allegation that the 5th respondent has no jurisdiction over the area of operation of Gudluru section is false. The allegation that power supply was given to one Venkataramaiah from the transformer, which was exclusively installed for the service connections of the writ petitioner and

another, is also false. The respondents are competent to release power supply by taking into account various factors. The petitioner cannot claim exclusive right over the transformer. Hence, the writ petition is not maintainable and is liable for dismissal.'

6. It is pertinent to note that alleging violation of the afore-said interim orders of this Court by the respondents, the writ petitioner filed a contempt case in CC.No.1033 of 2017. After hearing both the sides, the said contempt case was closed by an order, dated 28.07.2017.

7. In the backdrop of the above pleadings and submissions made in line with the pleadings and the rule position obtaining and in view of the failure of the petitioner to produce any document in support of the pleaded case, it follows that the petitioner failed to establish that the transformer is exclusively installed for the service connections of the petitioner and the said other person and that it is their exclusive transformer. On the other hand, the legal position obtaining makes it manifest that the transformer installed is the property of the Company and that the petitioner cannot claim exclusive right over the transformer. Hence, it follows that the petitioner is not entitled to the reliefs claimed in the writ petition.

8. However, learned counsel for the petitioner by an alternative submission requested to direct the respondents to examine as to whether the transformer has sufficient capacity to meet the demands of supply of power to the service connections provided from it and enhance its capacity, if necessary, to avoid complaints of low voltage and power failures on account of insufficiency of the capacity of the transformer to meet the demands of supply and to further direct the respondents to examine the sufficiency of the capacity of the transformer while providing further service connections from the transformer in future to any third parties to avoid any inconvenience to the existing service connection holders. He pointed out that in the affidavit of the officer of the

respondents also, he stated that the respondents are competent to release power supply by taking into account various factors and that, therefore, no further service connections shall be provided from the transformer in future without taking into account various factors including sufficiency of its capacity. In reply to the said alternative contention, learned standing counsel appearing for the respondents submitted that the petitioner is not entitled to seek any such directions to the respondents in the absence of any pleadings in the writ petition in that regard and that the members of the staff and officers of the respondent authorities will always discharge their duties as per the provisions of the Act, relevant rules and regulations and hence, no directions need be given and the writ petition may be dismissed.

9. Having regard to the facts and the submissions, the Writ Petition is disposed of directing the members of the staff and officers concerned of the respondent authorities to make periodical inspections of the transformer and the service connections provided from the transformer as per the assigned statutory functions and duties and take into consideration the capacity of the subject transformer along with other factors while releasing power supply in future to any third parties from the subject transformer. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13.06.2018
Vjl