

THE HON'BLE JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.30495 of 2011

ORDER:

The petitioners seek Writ of Mandamus declaring the action of the 1st respondent in initiating proceedings No.AP/RO/GNT/Comp-I/KST-I/40258/2011/4271 dated 28.10.2011 as illegal and without jurisdiction and consequently quash the same.

2a) Petitioner No.1 is Southern Power Distribution Company Limited, represented by Superintending Engineer, Vijayawada. Its case is that electricity generation and supply in the State of Andhra Pradesh is originally vested with the then A.P. State Electricity Board (APSEB). However, pursuant to the A.P. Electricity Reforms Act, 1998, the APSEB was unbundled as A.P. Power Generation Corporation (APGENCO) and A.P. Transmission Corporation (APSTRANCO) w.e.f. 01.02.1999. The APTRANSCO was further unbundled with effect from 01.04.2000 into Transmission Corporation (ASTRANCO) and four Distribution Companies (DISCOMS). The petitioner is the Southern Power Distribution Company of A.P. Limited (APSPDCL) which came into existence with effect from 01.04.2000 and it is a State owned Public Company formed with its Head Quarters at Tirupati for distribution of power supply to six districts, viz. Krishna, Guntur, Prakasam, Nellore, Chittoor and Kadapa Districts.

b) The further case of the petitioners is that APSPDCL is awarding contracts to private accounts agencies to undertake billing activity for the distribution companies. The Chartered Accountants/Private Agencies have

taken up the work at different platforms in a different process for the purpose of billing. The work of the agencies is to visit the customers' premises under different categories and to take meter reading with regard to the supply of power and generate the bills and give to the consumers on the spot. The work itself is piece rated contract. The persons engaged by the billing agency and their details are not available with the APSPDCL.

c) The further case of the petitioners is that AP Contract Labour Union (Regd.No.B-1996), affiliated to Bharateeya Mazdoor Sangh, Meter Reading-cum-Spot Billing Wing represented by its District President—T.Seshachalam filed W.P.No.5825 of 2009 to declare the action of the respondents in not enforcing the EPF Scheme to the members of Petitioner—Union as illegal and arbitrary. Notice was ordered in the said writ petition.

d) While so, Employees Provident Fund Organization issued notice under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act") on 17.02.2010 with regard to non-enrollment of workers engaged through Private Accounting Agencies (PAAs). However, it was brought to the notice of EPF Authorities that in W.P.No.31758 of 2010 and W.P.No.24821 of 2010 it was held by the High Court that the Private Accounting Agency do not come under the definition of 'contractor' as defined under Section 2(f) of the Act and consequently the persons engaged by them, who are executing the work of DISCOMs, do not come under the definition of 'employee' under the meaning of the Act. On that, the proceedings initiated under the Act have been kept in abeyance.

e) The further case of the petitioner is that EPF Authority under Section 7A of the Act issued proceedings on the representation of Sri T.Seshachalam, District President, A.P. Contract Labour Union that the judgments in the above writ petitions are not relevant to the workers of meter reading and billing. In response to the same, letter dated 23.05.2011 was addressed to the Employees Provident Fund Organization stating that T.Seshachalam filed W.P.No.5825 of 2009 for extension of benefit of the Act and therefore requested to keep the matter in abeyance till disposal of the said writ petition. However, without considering the said representation, proceedings dated 25.07.2011 were issued to produce the records in respect of non-enrolment of employees who were working as meter reading and spot billing agents from April, 2009 onwards and authorized representative was directed to attend on 17.08.2011. Thereafter, the matter went on adjournments. The impugned proceedings initiated are null and void and hence the instant writ petition declaring the action of the respondents as illegal and without jurisdiction.

f) The 1st respondent filed counter and opposed the writ petition.

g) In WPMP No.37778 of 2011 dated 17.11.2011 this Court passed interim order to the following effect.

“ In the meanwhile, the petitioners reliance upon the decision of this Court in W.P.Nos.28153 of 2008 and 14508 of 2009, dated 30.04.2010, prima facie has bearing on the enquiry proposed under Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (for short “the Act”).However, learned Standing Counsel informed the Court that an appeal against the said decision is pending.

Hence, I deem it appropriate to permit the enquiry under Section 7A of the Act to go on giving liberty to the petitioner to raise all his contentions against the proposed liability. However, no final order in the said proceedings be passed until further orders are passed in this writ petition.”

3) When the matter came up for hearing today, both the learned counsel would submit that final order may be passed by the 1st respondent in the enquiry conducted under Section 7A of the Act and opportunity may be given to the aggrieved party to take recourse available under law.

4) In view of above submission, this writ petition is disposed of permitting the 1st respondent to pass final order in the enquiry conducted under Section 7A of the Act and the aggrieved party is at liberty to take recourse available under law. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 08.10.2018
Slk/Murthy

U. DURGA PRASAD RAO, J

