THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.22170 of 2006

ORDER:

This writ petition is filed seeking a writ of mandamus, declaring the action of respondent No.1 in issuing demand notice, dated 26.07.2005, which was confirmed by the 2nd respondent vide final assessment order, dated 15.05.2006 and also confirmed by the 1st respondent vide his proceedings, dated 04.10.2006 as illegal and arbitrary, and also seeking a consequential direction directing the respondents not to disconnect the electricity connection to the petitioner company bearing HT Service No.HDN 280.

Heard Sri M.P.Chandramouli, learned counsel for the petitioner and Sri R.Vinod Reddy, learned standing counsel for the respondents.

It has been contended by the petitioner that the petitioner is a manufacturing company, manufacturing various electrical and electronic wires and cables. For the purpose of business, the petitioner company had obtained high tension electricity supply for its production. While the petitioner company was functioning, the respondents had inspected the premises of the petitioner company on 31.05.2005 and came to a conclusion that the meter installed at the petitioner factory premises was not functioning properly, and consequently, the respondents had issued a provisional assessment of loss of electricity supply, vide proceedings dated 26.07.2005. Thereafter, respondent No.2 had passed orders on 15.05.2006, confirming the provisional assessment of loss of electricity on account of defective meter. Aggrieved by the same, the petitioner company had approached respondent No.1 and respondent No.1 had also confirmed the provisional assessment demand for the loss of electricity on account of defective meter, vide his proceedings, dated 04.10.2006. Aggrieved by the said orders, the present writ petition is filed.

Clause No.22.3.3.1 of the Terms and Conditions of Supply, which is applicable to the present case, reads as under:

> "The quantity of electricity supplied during the period which the meter ceased to function or became defective, shall be determined by taking average of the electricity supplied during the preceding three months, preceding the month in which the said meter ceased to function or became defective provided the condition in regard to use of electricity during the said three months were not different from those which prevailed during the period in which the meter ceased to function or became defective."

The learned counsel for the petitioner has contended that as per clause No.22.3.3.1 of the Terms and Conditions of Supply, the average three months of electricity consumption charges should have been levied on account of defective meter, but the respondents had adopted a strange method wherein the new Andhra Pradesh Electricity Regulatory Commission General Terms and Conditions of Supply of Distribution and Retail Supply Licences (for short "new guidelines"), which came into force w.e.f 06.01.2006 and by applying the new guidelines the respondents had levied the loss of electricity by back billing for a period of 6 months, which is not permissible, because admittedly in the instant case, the defective meter was detected on 31.05.2005, and accordingly, the respondents themselves have issued a provisional assessment demand on 26.07.2005 and then, the question of applying new guidelines would not be made applicable.

The learned standing counsel for the respondents had contended that at the time of passing final orders, the new guidelines are already come into force and accordingly the new guidelines would apply instead of old guidelines.

This court, having considered the rival submissions of both the parties, is of the view that the procedure adopted by the respondents for back billing on account of defective meter is totally incorrect. Admittedly, the defective meter was detected only on 31.05.2005, which is prior to issuance of new guidelines and the respondents must follow the rules or guidelines prevailing at the relevant point of time, but they cannot be permitted to apply the new guidelines which came into force w.e.f 06.01.2006 and pass final orders.

Therefore, the writ petition is allowed. The impugned demand notice dated 26.07.2005 is set aside. However, the respondents are at liberty to follow the procedure for back billing on account of defective meter of the petitioner company, as per old rules, more so, in terms of Clause No.22.3.3.1 of the Terms and Conditions of Supply. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI,J

Date: 10.04.2018
Dsr