THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.16478 of 2007

ORDER:

This writ petition is filed seeking to issue a writ of mandamus, declaring the order, dated 22.11.2002, passed by respondent No.3, confirming the order, dated 20.05.2002, passed by respondent No.2 in respect of the supplementary claim by respondent No.1, vide letter No.DEE/O/TKL/AAE/Tech/F.DNo.556/2002, dated 30.04.2002 for an amount of Rs.5,10,43,136-40 ps towards back billing amount for the period from 31.01.2000 to 21.02.2002 relating to Naupada sub-station of the petitioner and the action of respondents Nos.1 to 4 in levying surcharge amounting to Rs.2.57 crores for non-payment of the amount payable under supplementary claim made by respondent No.1, vide letter dated 30.04.2002, as illegal and arbitrary, and consequently direct respondents Nos.1 to 4 to refund the amounts appropriated to an extent of Rs.7.67 crores to the petitioner.

Heard Sri P.Bhaskar, learned counsel for the petitioner and Sri M.Ravindra, learned standing counsel for the respondents.

It has been contended by the petitioner that Waltair Railway Division was a part of the South Eastern Railway Zone till March, 2004, and after formation of East Coast Railway with Head Quarters at Bhubaneswar, Waltair Division became part of East Coast Railway Zone. It has been further contended by the petitioner that the railway track is electrified between Visakhapatnam to Palasa and enroute there is a railway traction sub-station at Naupada. The Eastern Power Distribution Company of A.P.Limited which is a subsidiary of Transmission Corporation of A.P.Limited supplied electricity in the districts consisting of East Godavari, West Godavari, Visakhapatnam, Vizianagaram and Srikakulam. The petitioner has entered into an agreement, dated 31.01.2000, with respondent No.6 which was a statutory corporation constituted under Section 5 of the Electricity (Supply) Act, 1948 for supply of electric power to Railway traction sub-station at Naupada. In pursuance to the said agreement, respondent No.6 supplied the electric power to the petitioner.

It has further been contended by the petitioner that while the matters stood thus, the respondents have conducted inspection of the meter pertaining to railway traction of the petitioner on 21.02.2002 and found that because of the incorrect connection, the electricity consumption was shown as less. By order, dated 30.04.2002, respondent No.1 has estimated the loss of energy to a tune of Rs.5,10,43,136-40 ps for the period from 31.01.2000 to 21.02.2002. The Inspection Team has also found that the meter reading was showing 47.9% less due to incorrect connection. The respondents had issued assessment notice to the petitioner on 30.04.2002 intimating that the respondents had suffered loss to a tune of Rs.5,10,43,136-40 ps.

Learned counsel for the petitioner has contended that as per old Electricity Act and Regulations made therein, the respondents are entitled to calculate the back billing only to a maximum of 6 months, but at any rate, they cannot calculate the back billing for a period of two years.

The learned standing counsel for the respondents has contended that as per new Electricity Act, 2003, the respondents are entitled to collect back billing for a period of 2 years.

Admittedly, a perusal of the impugned proceedings would show that the incident has taken place prior to the commencement of new Act, and as per old Act and the Regulations made therein, the respondents can calculate the back billing for a maximum period of 6 months, but not for 2 years. Admittedly, in the present case, the respondents have erroneously calculated the back billing for a period of 2 years i.e., commencing from 31.01.2000 to 21.02.2002 on account of incorrect wiring. Therefore, the impugned orders are liable to be set aside.

Accordingly, the writ petition is allowed. The impugned orders are set aside. After calculating the back billing to a maximum permissible limit of 6 months, the respondents shall refund the rest of the amount to the petitioner, or alternatively, shall adjust the same in the future bills of the petitioner and communicate the same to the petitioner, within a period of 8 (eight) weeks from the date of receipt of a copy of this order. No order as to costs.

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

ABHINAND KUMAR SHAVILI,J

Date: 19.04.2018
Dsr