

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.12746 OF 2019

ORDER

The grievance of the petitioner is that the 3rd respondent under the garb of disconnecting service connection No.L4012266, is attempting to disconnect the power supply to the service connections Nos.L6007089 and L6007088 provided to the shops of the petitioner bearing Nos. 2, 3, 4 and 5 in building No.13-6-831/3, 13-6-831/4 and 13-6-831/5, Toli Masjid Complex, Karwan, Kulsumpura, Hyderabad.

The case of the petitioner, as per the averments made in the affidavit filed in support of the writ petition is that on 24.12.1993, the Wakf Board, through its Project Officer, allotted the subject shops in the Toli Masjid Complex, and since 1994, he has been in possession as tenant and has been paying the rents regularly and obtained receipts till the year 2010. Electricity is being supplied to his shops vide service connection Nos.L6007089 and L6007088, and till date no amount is due. His case is that the Managing Committee of the Toli Mosque, has disputes with him, and on their instigation, the respondent No.3 issued letter No.AE/OP/DATT47/Dist-III/City-IX/B'Bazar/F.No. /D.No.303/19, dated 27.05.2019, to the petitioner intimating that for non-usage of meter bearing Service No.L4012266, since, April 2013, they are about to disconnect the said service within three days. The case of the petitioner is that the service connection No.L4012266, which the respondent No.3, sought to disconnect, is not located in the subject shops and he is in no way concerned, and in the garb of disconnecting the said service connection, his service connections bearing Nos.L6007089 and L6007088, were sought to be disconnected. Aggrieved by the same, he filed the present writ petition.

This court granted interim order on 26.06.2019, directing the respondent not to take coercive steps for a period of one week and thereafter, the said interim order was extended on 3.7.2019 for a period of one week.

Respondent No.3 filed counter affidavit and while denying the allegation of the petitioner stated that the petitioner admitted that he is in possession of the subject shops in Toli Masjid Complex much prior to 2010. The power was being provided to the three shops by a three phase meter bearing service connection No. L4012266, and the same was granted in the name of the Secretary, Toli Masjid Committee. In respect of the said connection, there are dues of Rs.51.813/- up to April, 2013. As the petitioner failed to pay the dues, the bills were raised by clearly specifying the arrears and as the same were not paid, the power to the service connection was disconnected and the bills were stopped as per the General terms and Conditions of Supply (GTCS) from the month of April, 2013. The petitioner is liable to pay the dues in respect of the said service connection.

It is further stated that petitioner applied for new service connection on 03-06-2010 along with 'no objection certificate' dated 05-04-2011 issued by the Vice President, Managing Committee of Toli Masjid. The petitioner by suppressing the fact that there is already service connection bearing SC No. L 4012266, and the same is under disconnection for non-payment of the arrears of consumption charges, obtained two single phase connections bearing SC.No.L6007088, L6007089 in his name.

The officials of the 2nd respondent – company have been repeatedly visiting the office of the Toli Masjid Committee and demanding the arrears in respect of service connection bearing SC.No.L4012266, as the same has been issued in the name of the Secretary, Toli Masjid Committee. The officials of the said Committee have addressed a letter dated 08-08-2018 to the Divisional Engineer, TSSPDCL informing that the petitioner has played fraud and obtained

the two service connections in his name. They have also admitted that there are dues of Rs.52,000/- in respect of the service connection, which stand in the name of the Masjid. It is further stated that after verifying the records, the respondents have realized that there are dues of Rs.51,813/- in respect of service connection bearing SC.No.L4012266 and the same has been disconnected and kept under the category of 'bill stopped' for non payment of arrears. The petitioner by suppressing the said fact and playing fraud, has obtained two new single phase connections for the same premises, where the service connection bearing SC.No.L4012266, was located. The respondents have issued a notice dated 27.05.2019, demanding the petitioner to pay the arrears of Rs.51,813/- in respect of the service connection bearing SC.No.L4012266 within three days from the date of notice and on non-complying with the said demand, both the service connections in the name of the petitioner shall be disconnected. As the petitioner failed to comply the demand notice dated 27.05.2019, the service connections bearing Nos.L6007088, L 6007089, in the name of the petitioner, were disconnected on 17-06-2019. The petitioner suppressing the fact of disconnection, approached this court, and obtained interim orders. It is stated that the petitioner has played fraud, and he is liable to pay all the dues and surcharge for delayed payment in respect of service connection No.L4012266. With these averments, the writ petition was sought to be dismissed.

No reply affidavit is filed.

Learned counsel for the petitioner submits that the service connection bearing No. L 4012266 for which arrears are sought to be recovered, the petitioner is in no way concerned, and while reiterating the averments made in the writ affidavit, learned counsel for the petitioner alternatively submitted that even assuming that the petitioner has been using the power in respect of service connection No. L 4012266, the arrears, if any, have to be shown in the subsequent bills and the demand has to be raised with two years from the date on which it has become due, and thereafter, no demand can be raised as per the

Section 56(2) of the Electricity Act, 2003. In the present case, as per the averments made in the counter affidavit, the service connection No. L 4012266 was disconnected in April, 2013 and now after a period of six years, the respondents are seeking to recover the amount and in default in payment, are seeking to disconnect the service connections bearing Nos.L6007088, L 6007089, which stand in the name of the petitioner. Therefore, he submits that the impugned action of the respondent No.3, cannot be sustained.

On the other hand, Sri R.Vinod Reddy, learned Standing Counsel for respondents 2 and 3, reiterating the averments made in the counter affidavit, sought to dismiss the writ petition.

Heard Government Pleader for Energy for respondent No.1.

From the above averments the admitted case of the petitioner is that he is the tenant in the subject shops in Toli Masjid building, since 1994. In the writ affidavit, the petitioner only stated that the power to the shops in question is supplied under service connection Nos.L6007089 and L6007088. The writ averments are conspicuously silent whether the said service connections are provided to the petitioner since 1994. In the counter affidavit filed by the 3rd respondent it is stated that the power was being provided to the subject shops by a three phase meter bearing service connection No. L4012266, and petitioner failed to pay the dues and the bills were raised clearly specifying the arrears and as the same were not paid, the service connection was disconnected in April, 2013. In the counter affidavit it is further stated that petitioner suppressing that there is already service connection bearing S.C.No.L4012266, applied for new service connection on 3.6.2010, and obtained two single phase connections bearing S.C.No.L6007088 and L 6007089 in his name. It is further stated that the Toli Masjid Committee had also addressed letter dated 8.8.2018 to the Divisional Engineer, TSSPDCL, informing that that petitioner played fraud and obtained two service connections in his name. Further, the categorical case of

the 3rd respondent in the counter affidavit is that petitioner by suppressing the fact and playing fraud has obtained two new single phase connections for the same premises, where the service connection bearing No.L 4012266 was located.

The above averments made in the counter affidavit, have not been denied by the petitioner by filing any reply affidavit. Thus, from the material on record, it is clear that petitioner who is tenant in the subject shops since 1994, has been using the service connection bearing No. L 4012266 and failed to pay the bills, which resulted in disconnection, and by suppressing this fact, obtained two new single phase connections in his name bearing S.C.Nos. L 600 7088 and L 6007089 in the same premises, where the service connection bearing No. L 4012266 was located. When the respondent No.3, noticing this fact, sought to disconnect the present service connections for non-payment of arrears, he filed present writ petition, pleading that he is in no way concerned with the service connection No. L 4012266, and obtained interim orders. In view of these facts and circumstances, it is clear that petitioner has played fraud on the respondent and hence the alternative contention of the learned counsel for the petitioner that under Section 56(2), demand cannot be made after two years, cannot be countenanced, as fraud vitiates everything.

Thus from the above it is clear that petitioner suppressing the material facts approached this court with unclean hands, and hence the writ jurisdiction, which is discretionary and equitable, cannot be exercised in favour of such a person. Hence the writ petition fails and is accordingly dismissed.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:10—07—2019

AVS

