

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.13052 of 2019 & 13073 of 2019

ORDER::

The petitioner and respondents in both these writ petitions are one and the same, the issue involved is connected, hence are taken-up and heard together. It would suffice if facts in writ petition no.13052 of 2019 are adverted to.

02. The writ petition is filed seeking to issue a writ one in the nature of the writ of certiorari calling for the records relating to the order dated 22-06-2019 in Appeal No.72 of 2018 passed by the 4th respondent in confirming the order dated 28-02-2019 in CG No.324 of 2019 passed by the Consumer Grievances Redressal Forum-I, TSNPDCL, Warangal, and quash the same as being illegal, arbitrary and consequently direct the respondents to issue 'no due certificate' in respect of service connection no.HT-WGL-69, to meet the ends of justice.

03. The case of the petitioner is that he obtained electricity service connection no.HT-WGL-69 for running an industry and for that purpose entered into an agreement dated 13-11-1989 for sanction of contract load of 120 KVA. It appears vagaries of life befall on the petitioner, and seems to have sustained losses and his industry became sick and, therefore, he had to address a letter dated 28-07-2012 to the 2nd respondent to dismantle the service connection to his industry. Accordingly, the 2nd respondent vide his letter dated 11-09-2012 instructed the Asst. Divisional Engineer, Narasampet, to take steps in that behalf and disconnect the service connection and also to collect the arrears if any. Accordingly the premises of the

petitioner was inspected on 26-09-2012 and the petitioner was asked to pay the dismantle charges of Rs.5,295/- which was accordingly paid by the petitioner on 14-11-2012 and the service connection to the petitioner's industry was dismantled. That the respondents have not taken any steps to recover the arrears within two years as prescribed under Section 56 (2) of the Electricity Act, 2003, (for short, "the Act") in respect of the service connection in question. That notice said to have been issued in the year 2014 allegedly by the 3rd respondent to pay Rs.5,77,000/- after adjusting the security deposit lying with the Department, is not served on the petitioner and, therefore, there is no demand to pay the arrears, if any in respect of the service connection and the petitioner came to know about issuance of notice only when he raised a complaint before the Consumer Grievances Redressal Forum-I, Warangal, seeking for a direction to the respondents to issue *no due certificate* in respect of the service connection and to refund security deposit and write off the demand raised for 3 months minimum bill, FSA collectable surcharge. That the claim is time barred in view of Section 56 of the Act, but without considering the said fact, the primary authority rejected the case of the petitioner vide proceedings CGRF in CG No.3224 of 2019, dated 28-02-2019, which was confirmed by the 1st appellate authority. Hence, this writ petition.

04. Counter affidavit is filed by the 2nd respondent wherein it is stated that under Clause 5.9.4.2, it is mandatory that in case of termination of the contract, the consumer is liable to pay all the sums due under the agreement and as per General Terms and Conditions of Supply (GTCS), the petitioner is liable to pay the arrears,

if any, as on the date of dismantle of the service connection. That the amount of Rs.5,295/- paid by the petitioner was towards dismantling charges to dismantle the service connection and the amounts paid for that purpose itself does not exonerate the petitioner from paying the arrears and charges as applicable, as on date of dismantling the service connection or till it is paid by him. That the service connection was dismantled on 03-11-2012 and the demand notice to pay the arrears was issued by the 3rd respondent on 28-04-2014, which is well within two years and the demand was raised within the time ordained in Section 56 of the Act, and as such there is no merit in the claim of the petitioner that the demand made by the petitioner is time barred. That the primary authority and the 1st appellate authority having considered the matter in proper prospective rightly directed the petitioner to pay the amounts of Rs.5,07,369.20 paise. That there are no merits in the writ petition and the same is liable to be dismissed.

05. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

06. The issue that arises for consideration in this case is whether the concurrent finding recorded by the primary and the 1st appellate authority in holding that Section 56 (2) of the Act, is not applicable to the facts of the case and; whether the direction to the petitioner to pay a sum of Rs.5,07,369.20 paise towards arrears of electricity charges for issuance of '*no due certificate*' is sustainable in law ?

07. Learned counsel for the petitioner placing reliance on Sub-section (2) of Section 56 of the Electricity Act, 2003, contended that the claim made by the department is time barred. It is also contended that there is no consumer relationship with the Department, when once the service connection is dismantled and both the primary and 1st appellate authority erred in considering these aspect in the proper perspective.

08. *Per contra*, learned standing counsel appearing for the respondents contended that dismantling the service connection will not exonerate the petitioner from paying the arrears of electric bill till the date of dismantling the service connection or till it is paid by him. It is also stated that as per GTCS Clause 5.9.4.2 it is mandatory that in case of termination of the contract, the consumer is liable to pay all the sums due under the agreement.

09. The undisputed facts are on the request of the petitioner to dismantle electric service connection, the Department required him to pay a sum of Rs.5,295/- towards dismantling charges, which the petitioner paid and pursuant thereto, the electric service connection was dismantled. The instruction of the 2nd respondent was to collect the arrears if any after dismantling the electric service connection.

10. Section 56 of the Electricity Act, 2003 reads as under:-

“56. Disconnection of supply in default of payment.—(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice

in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- a. an amount equal to the sum claimed from him, or*
- b. the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

11. A reading of the above provision goes to show that the same is applicable in case of consumers whose supply of the electricity is not disconnected. Consequently, the limitation provided under the said provision is applicable to consumers whose service connection is not disconnected and dues are shown continuously as recoverable as arrears of charges for the electricity supplied. Even otherwise, in this case notice was issued on 28-02-2014 demanding payment after dismantling service on 03-11-2012 and the petitioner admitted the factum of issuance of notice in February, 2014 during the course of hearing before the primary authority and the contract stood terminated, as such claim is within limitation. In the present case question of showing the impugned dues continuously in the running bills does not arise as service is dismantled on 03-11-2012, the purpose of Section 56 (2) of the Act is different and petitioner cannot invoke the same in the facts and circumstances of this case.

12. The decision of Full Bench of Bombay High Court in WP No. 10764/2011 & batch relied on by learned counsel for petitioner has no application to the facts of the present case as the facts in that case pertain to a consumer whose services were not dismantled and in this present case, it is otherwise. Even otherwise, Full Bench while interpreting Section 56 (2) of the Act in para 78 of the judgment held as follows:-

"78. Assuming that it was and as noted by the learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read as statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by sub-section (2) of section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the

legal provision in question. Unless and until the preconditions set out in sub-section (2) of section 56 are satisfied, there is no question of the electricity supply being cut-off. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiple factor, still no recovery beyond two years permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable."

13. In the decision above, the demand pertains to long before termination of agreement and in the present case the facts are discernable. Even otherwise, the petitioner is liable to pay all sums due under the agreement to which he is party as per GTCS Clause 5.9.4.2 in case of termination of the contract as the non-absentee clause contained in Section 56 (2) of the Act is notwithstanding contained in any other law, but not this Act.

14. This Court is not sitting in appeal over the impugned decision of respondents. In view of above facts and circumstances, this Court is not inclined to interfere with the impugned order in the writ petition in exercise of extraordinary equitable jurisdiction under Article 226 of Constitution of India. In view of the orders passed in WP No.13052 of 2019, affirming the order passed by the 1st appellate authority, the writ petition No.13073 of 2019 filed assailing the action of the respondent-authorities in disconnecting the power supply to weigh bridge on the

ground that the petitioner fell in arrears to the service connection the WP No.13052 of 2019 is also dismissed. As a sequel to the dismissal of the writ petitions, miscellaneous petitions, if any, pending in these writ petitions also shall stand disposed of. There shall be no order as to costs.

Dated: 25-11-2019
NRG

A.RAJASHEKER REDDY, J



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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