

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.929 of 2016

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Pratap Narayan Sanghi, learned Senior Counsel for the appellants and Mr. R.Vinod Reddy, learned counsel for the respondents.

2. The sole appellant died during the pendency of the writ appeal and his legal representatives were brought on record as appellant Nos.2 and 3 *vide* the order dated 30.08.2022 passed by this Court in I.A.No.1 of 2022 (briefly referred to hereinafter as 'the appellant').

3. This appeal is directed against the final order dated 18.08.2016 passed by the learned Single Judge dismissing Writ Petition No.26820 of 2005 filed by the appellant as the writ petitioner.

4. Appellant had filed the related writ petition for quashing of orders dated 03.05.2005 and 29.10.2005.

5. On the ground that appellant had resorted to pilferage of electricity in his establishment, final assessment proceedings were initiated by the 2nd respondent. It may be mentioned that establishment of the appellant as well as the electricity meter were inspected by Sri G.Raja Reddy, an official under the respondents on 12.04.1999. During the inspection, he noticed that all the four meters were found tampered whereafter he had tentatively reported that the consumer had indulged in pilferage of energy by tampering with the meter coverage seals and meddling with the meter mechanism; thus suppressing actual consumption of energy. 2nd respondent had issued show cause notice to the appellant, but appellant neither responded to the show cause notice nor attended the personal hearing. Thereafter examining the particulars, the assessment was made at an average of 7 hours per day for a connected load of 3 kilo watts

whereafter 2nd respondent came to the conclusion that the value of energy pilferaged was Rs.1,25,361.00. Certain amounts towards supervision charges and reconnection charges were added. Consequently, appellant was called upon to pay the aforesaid amount *vide* the final assessment order dated 03.05.2005.

6. Simultaneously a criminal complaint was lodged against the appellant for alleged pilferage of electricity whereafter appellant was charge sheeted as an accused in Crime No.10 of 1999 for allegedly committing the offence of pilferage under Sections 39 and 44 of the Indian Electricity Act, 1910. On cognizance being taken, C.C.No.463 of 1999 was registered on the file of III Metropolitan Magistrate at Hyderabad. By the judgment and order dated 13.06.2000, appellant was found not guilty of the offences under Sections 39 and 44 of the Indian Electricity Act, 1910 and was accordingly acquitted.

7. Appellant also preferred an appeal against the final assessment order dated 03.05.2005. By the appellate

order dated 29.10.2005, the appellate authority held that appellant was responsible for pilferage of energy and estimated the amount of loss sustained by the 1st respondent at Rs.1,03,666.00 plus supervision charges, thus modifying the order dated 03.05.2005 to that extent.

8. Aggrieved by the aforesaid, appellant preferred the related writ petition.

9. Learned Single Judge *vide* the final order dated 18.08.2016 noted that appellant had failed to avail the opportunity of hearing both at the enquiry stage as well as at the appellate stage, except taking the plea that he was acquitted in the criminal case. Learned Single Judge took the view that the administrative authority had followed the laid down procedure and arrived at the impugned decision. Therefore, Court should not substitute its views for that of the administrative authority, the Court not being an appellate authority. Accordingly, the writ petition was dismissed on the ground that it was not tenable in view of the law laid down by the Supreme Court.

10. Learned counsel for the appellant submits that learned Single Judge was not at all justified in dismissing the writ petition of the appellant. There was clear acquittal of the appellant by the criminal Court. The charge of pilferage of electricity was completely demolished by the criminal Court whereafter appellant was acquitted on merit. None of the witnesses could even remotely prove the charge of pilferage against the appellant. Therefore, it was not at all justified for the appellate authority to once again hold the appellant to be guilty of pilferage. Bereft of the charge of pilferage, there was no basis either for the 1st respondent or for the appellate authority to levy higher electricity charges on the ground that there was more consumption of electricity by the appellant which was not reflected in the electricity meter because of tampering or pilferage by the appellant.

11. On the other hand, Mr. R.Vinod Reddy, learned counsel for the respondents supports the order passed by the learned Single Judge. According to him, mere acquittal

in a criminal case would not automatically lead to a favourable decision by the administrative authority. No case for interference is made out.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

13. At the outset, we may advert to the decision of the criminal Court dated 13.06.2000. The point for consideration before the criminal Court was whether prosecution could prove the charge against the accused (appellant) beyond all reasonable doubt. Case of the prosecution was that appellant was running a jewellery shop where by tampering with the electricity meter, he had consumed more electricity than reflected in the meter. This was detected in the course of inspection whereafter charge of pilferage of electricity was brought against the appellant. After thorough examination of the evidence on record including the testimony of the prosecution witnesses, the criminal Court noted that the inspection was made on 12.04.1999 but the 'seized' meter was tested

in the laboratory on 17.07.1999 after more than three months. Prosecution could not place any material on record to prove that appellant was complicit in causing theft of electricity. On the other hand, taking note of the inordinate delay in sending the concerned meter to the laboratory, the criminal Court noted that there was every possibility of tampering with the meter after its removal from the premises of the appellant. Prosecution had failed to prove the charge against the appellant beyond any doubt. Therefore, the appellant was found not guilty of the offences charged and he was accordingly acquitted.

14. Adverting to the final assessment order dated 03.05.2005, we find that the same also proceeded on the basis that there was pilferage of electricity by the appellant. When this was carried in appeal, the appellate authority also concluded that appellant was responsible for the pilferage of energy.

15. On due consideration, we are of the view that neither the 2nd respondent nor the appellate authority

could have held that the appellant was responsible for the pilferage of energy in view of the clear finding of fact rendered by the criminal Court.

16. Learned Single Judge in our view erred in applying the principles of service jurisprudence in a matter of alleged theft of electricity. In service law it is trite that acquittal in a criminal case would not lead to automatic re-instatement in service of the delinquent. The said principle cannot be extended to higher levy of electricity charge on the ground of theft of electricity. Finding rendered by the criminal Court giving a clear acquittal to the appellant was a relevant factor which was required to be considered by the appellate authority. Having not considered the same, the finding rendered by the appellate authority stood vitiated. There was no basis at all for both the 2nd respondent as well as the appellate authority to levy higher electricity charges on the presumption that appellant had committed theft of electricity which was nullified by the criminal Court.

17. Consequently, we set aside the order passed by the learned Single Judge dated 18.08.2016, further setting aside the orders dated 03.05.2005 and 29.10.2005. Consequently, Writ Petition No.26820 of 2005 would stand allowed.

18. Writ Appeal is accordingly allowed. However, there shall be no order as to costs.

19. As a sequel, miscellaneous applications pending, if any, in this Writ Appeal, shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 23.01.2023
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