

(1991) 07 AP CK 0010
In the Andhra Pradesh High Court
Case No : A.A.O. No. 840 of 1991

Andhra Pradesh State Electricity Board, Hyderabad and others	APPELLANT
Vs	
M/s. Andhra Cements Ltd., Dachepalli	RESPONDENT

Date of Decision : 04-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 3
Electricity (Supply) Act, 1948 — Section 78
Electricity Act, 1910 — Section 24

Citation : AIR 1991 AP 350 : (1991) 3 ALT 65 : (1991) 2 APLJ 221

Hon'ble Judges : Venkatarama Reddy, J; Sardar Ali Khan, J

Bench : Division Bench

Advocate : C.V. Nararjuna Reddy, for the Appellant; K.N. Jwala, for the Respondent

Judgement

Sardar Ali Khan, J.—The C.M.A. is filed by the Andhra Pradesh State Electricity Board and two others, who are the" defendants in O.S. No. 84/91 on the file of the Additional Subordinate Judge, Narasaropet. This C.M.A. is directed against the order dated 26-4-1991 in I.A. 637/91 in O.S. No. 84/91 granting interim injunction preventing the appellants herein from disconnecting power supply for non-pay merit of arrears of electricity consumption charges due from the respondent Andhra Cements Limited, Dachepalli "till talks coming into effect between petitioner, Government and respondent." The lower Court has held that the three units of the respondent Andhra Cements Limited are in adverse financial position and the balance convenience lies in their favour for granting the facility of payment of dues by instalments at the rate of Rs. 75 lakhs per month commencing from 20-5-1991 onwards towards the current and future consumption charges. It is obvious the only reason given by the Court below for restraining the Electricity Board from disconnecting the power supply for default in the payment of arrears is that the three units of the respondent-company are in adverse financial position and therefore the facility of instalments is to be given to them.

2. It is rather curious to note that the order of injunction has been passed by the Court below without giving a notice to the defendants in the suit. It is stated that if a notice is given to the other side, it will defeat the purpose of filing the petition for the grant of an interim injunction. Nothing more is said in the order for dispensing with the notice. Under Order 39, Rule 3 of the Code of Civil Procedure, it is provided that the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting injunction, direct notice of the application to the opposite party. It may be noticed that the suit and the W.A. were filed 10 days after the expiry of the time fixed for payment of the bills issued by the appellants herein. Under these circumstances, it cannot be said that a few more days delay caused due to the giving of notice to the other side would have resulted in defeating the very purpose for which the petition for injunction was filed before the lower Court. The lower Court, therefore, committed a serious judicial error in not issuing notice to the other side before granting injunction in this matter.

3. It is also evident from the facts of the case that the Court below had chosen to issue the order of injunction restraining the appellants herein from the recovery of arrears of consumption charges due from the respondent in sheer disregard of a judgment of this Court in C.M.R. No. 1545/90 and batch dated 4-4-1991. In the said judgment of the Division Bench between the Andhra Cement Company Limited and the Andhra Pradesh State Electricity Board and others it was categorically held that the respondent-Andhra Cement Limited cannot be given the facility of payment of arrears by instalments. In fact, the Division Bench observed that it cannot fail to consider the difficulties of the Board in having to maintain supply to a company which had been a continuous defaulter. In the face of such judgment of the Division Bench denying the facility of instalments to the respondent herein and also holding that the electricity supply is liable to be disconnected for want of payment of such arrears, the Court below ought not to have issued the order of injunction which is the subject matter of appeal before us. Evidently, the respondent has been making every effort to delay payment of the arrears due from it towards the supply of electricity which runs into crores of rupees and at the same time has been trying to ensure the uninterrupted supply of electricity to its units.

4. The lower Court has not given any reasons whatsoever in its order directing the respondents to pay at the rate of Rs. 75 lakhs per month commencing from 20-5-1991 due for the current and future consumption charges till an anticipated settlement is arrived at between the Government and the respondent company. It does not stand to reason that merely because the respondent company has run into Financial difficulties action should not be taken against it for nonpayment of arrears in accordance with law. The appellant-Electricity Board is empowered under S. 24 of the Electricity Act to effect disconnection of the supply to such defaulting consumers and to take steps for the recovery of the arrears due to it. This action to be taken by the Electricity Board has nothing to do with the financial condition of a consumer who has used the electricity and is trying to

evade the payment for the same.

5. Moreover, the Court below has been oblivious of the fact that a mere pendency of a representation made to the Chief Minister does not give rise to a legal right to seek the assistance of the civil court to restrain disconnection. According to the respondent-company, on 8th April 1991. A representation, was made to the Chief Minister on which an endorsement dated 11-4-1991 has been made by the Chief Minister which is in the following words:

"In view of the danger of the closure of the unit necessary instalments facility may be given both on arrears and current electricity bill so that company may pay monthly Rs.75,00,000/- (Rupees Seventy Five Lakhs) please work out and orders may be issued.

CHIEF MINISTER."

The above said endorsement said to have been made on the file by the Chief Minister does not come within the purview of a direction given u/s 78-A of the Electricity (Supply) Act, 1948 on question of policy. In fact, a perusal of the record in this case reveals the fact that no action whatsoever has been taken in pursuance of the order of the Chief Minister. So much so that in D.O. Lr. No. 9292/91-3 dated 14-5-1991 the Principal Secretary to Government has informed the Chairman of A. P. State Electricity Board that the Government decision on the request of M/s. Andhra Cements Limited will take a little more time, that in the meanwhile legal action as required to move the sub-Court, Narsaraopet for vacating the interim injunction orders should be taken up and that the Government decision will be communicated at the appropriate time based on which further necessary action can be taken. This letter clearly shows that no follow up action has been taken, much less any decision arrived at, by the State Government in pursuance of the endorsement made by the Chief Minister. It is also relevant to mention that in the plaint, what all has been said is that the Government is actively considering the representation and has called for the comments of the Electricity Board.

6. We are inclined to take the view that the mere endorsement dated 11-4-1991 made by the Chief Minister does not create any rights and obligations between the parties. Moreover, no formal order has been issued or commented in pursuance of the said endorsement by the State Government and neither any direction has been given under S.78-A of the Electricity (Supply) Act, 1948. Further more, the Division Bench of the High Court in C.M.A. 1545/90 and batch dated 4-4-1991 has already held that the electricity supply can be disconnected by the Board for non-payment or arrears by the respondent company which has become final in view of the withdrawal of the SCLP filed by the respondent in the Supreme Court.

7. The Court below has fixed a sum of Rs. 75 lakhs to be paid monthly by the respondent-company without taking into consideration volume of arrears, running into crores of rupees, due from the respondent-company, and has failed

to consider the material point that the sum of Rs. 75 lakhs per month is hardly sufficient even to cover the current monthly bill which is being incurred by the company for the running of its factory at Dachepalli. Such arbitrary fixation of amount cannot be countenanced in law and shows a certain lack of judicial propriety in dealing with matters of this nature. It may be mentioned here that in Civil Appeals Nos. 2569-70 of 1985 the Supreme Court held that the facility of paying electricity dues by instalments cannot be granted as it would result in depriving the Board the recovery of the amounts which are legitimately due to it. The Supreme Court also observed that these are all matters essentially for the Electricity Board to decide taking into account the particularities of the circumstances and hardships of each individual case. The Electricity Board itself borrows money on high rates of compound interest for carrying on its activity and its functioning will be seriously impaired if the amounts are not paid by the consumers of such huge quantity of electricity in time.

8. u/s 24 of the Indian Electricity Act, 1910 the Board has got the power to discontinue supply of electricity to consumer who has neglected to pay the charges. This statutory power of disconnection of supply is a potent weapon in the hands of the Board which can be put to good use for recovery of arrears due to it from the consumers who dodge such payment.

9. Finally, even the balance- of convenience lies in favour of the Electricity Board in this case to demand and collect the arrears due to it over a long period of time and it is in the public interest that the Board should be allowed to proceed for the recovery of the arrears due to it in accordance with law. Here again the lower Court failed to keep in view the observations made by Division Bench in the case referred to supra.

10. In view of the above discussion, we hold that the injunction granted by the Court below is liable to be vacated and it accordingly vacated.

11. In the result, the C.M.A. is allowed with costs.

12. Appeal allowed.