
(2002) 01 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16092 and 17098 of 1996

G. Laxminarayana and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 2, 24

Citation : AIR 2002 AP 337 : (2002) 3 CivCC 312 : (2002) 4 RCR(Civil) 529

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Rama Rao, for the Appellant; K.N. Jwala, S.C. for A.P. Transco, for the Respondent

Judgement

P.S. Narayana, J.—These two Writ Petitions are filed by the tenants and also owner of the subject premises against the action of the A. P. State Electricity Board, hereinafter referred to as "Board", in taking steps to disconnect service connections on the ground that the owner of the respective mulgies and the owner of the premises had been in arrears, invoking Condition No. 42.3.(d) of the A. P. State Electricity Board Terms and Conditions of Supply.

2. No doubt, the writ petitioners also had questioned Condition No. 43.3.(d) as unreasonable, arbitrary and illegal. But however, at the outset Sri Rama Rao, the counsel representing the writ petitioners had stated that he is not pressing the relief so far as questioning the said condition on the ground that it is unreasonable, arbitrary and illegal, is concerned.

3. The facts in brief as narrated in the respective affidavits filed in support of the Writ Petitions are as follows :--

In W. P. No. 16092/96 it is averred that all the Writ Petitioners were the tenants of mulgies bearing No. 7-93, 7-93/1, 7-91, 7-90, 7-90, 7-89, 7-93/2, 7-90/6, 7-90/3 and 7-93/3 situated at Narsannapet village, Warangal District and one

Upender Rao is the landlord and they got electricity connections with consumer Nos. 643, 647, 644, 565, 4278, 336, 645, 648, 603 and 320 respectively. It was also stated that they have been paying the bills regularly. It is stated that the 4th respondent intimated them through proceedings dated 30-7-1996 bearing No. SE.OP.WGL.CRS.II.D.No. 1790/86 that their landlord who established the rice mill under the name and style of partnership firm called Lord Venkateswara Raw and Paraboiled Rice Mill, Narsannapet village and Mandal, Warangal District, after obtaining loan from A. P. State Financial Corporation, was in arrears of electricity charges and had not paid the same and the Electricity Department is disconnecting all the service connections standing in his name for non-payment of the said arrears. It is also stated that on enquiry they came to know that their landlord had established a rice mill in the name aforementioned under a partnership firm and the same was closed after taking high tension service connection within two months and it was also stated that the A. P. State Financial Corporation had seized the mill and the same was sold out to a third party. The other details narrated may not be much relevant. No doubt a suit filed by the landlord as against the A. P. State Financial Corporation also was referred to in the affidavit.

4. Sri Upender Rao, the landlord of the mulgies referred to supra, as owner of H.No. 7-92 had filed W.P. No. 17098/96 for the same relief questioning the action of the Board in taking steps to disconnect the service connection pursuant to the proceedings dated 30-7-1996 on the ground that the owner of the mulgies is in arrears and for other appropriate reliefs. It is stated in the affidavit filed in support of the Writ Petition that he is the owner of the residential house referred to supra and was also running a clinic in the said house. It was also stated that he was one of the partners of Lord Venkateswara Raw & Paraboiled Rice Mill situated at Narsannapet village and Mandal and in the name of the firm they had taken high tension service connection for running the rice mill in the year 1982 along with two other partners M. Kishan Rao and Balkishan Rao. It was further stated that the rice mill started functioning in the year 1984 and was closed in the year 1985 and they had utilized high tension connection for the said mulgi only for a period of two months. Later on, the mill was closed due to losses and since instalments relating to the loan from A.P. State Financial Corporation were not paid, the same was auctioned and they had also filed suit O.S. No. 84/87 on the file of Subordinate Judge, Mahabubabad against the A.P. State Financial Corporation and the Board also. But however, the said suit was dismissed and subsequent thereto the memo dated 30-7-1996 for disconnection of electricity to the residential house and the mulgies had been given. It was further stated that the residential house consumer service connections are 642 and 1009 i.e., item Nos. 9 and 17 in the impugned proceedings dated 30-7-1996 and on the mere ground that there is default in payment of consumer charges for high tension service of connection Lord Venkateswara Raw & Paraboiled Rice Mill they have also threatened to disconnect the service of the tenants. It was also stated that the tenants had filed W.P. No. 16092/96 and in W.P.M.P. No. 19769/96 a direction

was given not to disconnect the electricity connection on condition that the petitioners in the said Writ Petition i.e.. the tenants shall pay Rs. 5000/-within four weeks from 12-8-1996 and it is brought to notice that this direction was complied with.

5. In the Writ Petition filed by the owner also i.e. W.P. No. 17098/96, interim direction was granted and both the Writ Petitions are taken up for final hearing.

6. Sri Rama Rao, the learned counsel representing the writ petitioners had drawn my attention to Condition No. 42.3. (d) of Board's Terms and Conditions of Supply and also to the definition of "consumer" u/s 2(c) of the Indian Electricity Act, 1910 and had contended that for the non-payment of the arrears of a partnership firm as such his service connections relating to mulgies in possession of the tenants and the service connections relating to the residential premises cannot be disconnected. The learned counsel also had drawn my attention to the impugned proceedings wherein the order itself specifically says that the arrears are in relation to Venkateswara Raw & Paraboiled Rice Mill as such and not the individual consumer Sri Upender Rao. The learned counsel also had placed reliance on the decision of this Court in Tanduri Chenchiah and Others Vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others,

7. Sri Jwala, the learned Standing Counsel had vehemently contended that inasmuch as Upender Rao is in arrears as a consumer, the Board is at liberty to proceed with the disconnection under the Terms and Conditions of Supply and hence, there is no illegality in the impugned action, The learned counsel also had drawn my attention to the difference of language in Condition No. 6.14 of Terms and Conditions of Supply of Electricity as it existed, which is the subject-matter of the decision by the Division Bench in the decision referred Tanduri Chenchiah and Others Vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, supra and the present provision. The learned counsel also had drawn my attention to several other provisions of the Indian Electricity Act, 1910 and also the Electricity (Supply) Act, 1948 and the power of the Board to impose such terms and conditions u/s 49 of the Electricity (Supply) Act, 1948.

8. Heard both the counsel.

9. Since the relief relating to questioning the validity of the provision had not been pressed by the counsel representing the writ petitioners, the other portion of the relief relating to questioning the validity of taking steps to disconnect the service connections pursuant to the proceedings dated 30-7-1996 bearing No. SE.OP.WGL.CRS.HT.D. No. 1790/96, alone will survive in the above Writ Petitions filed by the tenants and the owner.

10. Now the short question which falls consideration in these Writ Petitions is whether the Board can proceed with disconnection of the service connections of the Writ Petitioners on the ground of non-payment of arrears relating to a partnership firm, in which Upender Rao, the petitioner in W.P. No. 17098/96 had been one of the partners.

11. Condition No. 42.3.(d) of the Board's Terms and Conditions of Supply of Electricity deals with disconnection due to default in payment and the said provision reads as follows :--

"Any other sums payable to the Board under the contract of supply or the tariff and terms and conditions of supply notified by the Board, u/s 49 of the Electricity Supply Act, the Board may, without prejudice to its other rights cause to be disconnected all or any of the other services of the consumer though such services be distinct and are governed by separate agreements and though no default occurred in respect thereof."

In the said provision, the words ".....the Board may, without prejudice to its other rights cause to be disconnected all or any of the other services of the consumer though such services be distinct and are governed by separate agreements and though no default occurred in respect thereof" assume importance. Section 2(c) of the Indian Electricity Act, 1910 defines "consumer" as :

"Consumer" means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act, or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee, the Government or such other person, as the case may be;

It is no doubt true that the language of Condition No. 6.14 of the Terms and Conditions of Supply of the electricity, which fell for consideration in the decision referred to Tanduri Chenchiah and Others Vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, supra is not in part materia with the present provision. But in my considered opinion, the principle underlying is one and the same. In the decision referred Tanduri Chenchiah and Others Vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, supra it was held that where a firm of which a particular person was the Managing partner who had entered into service contract with the Board and the Board recognized the firm as a consumer and it committed default and fell into arrears, to recover those arrears the Board cannot disconnect private and personal service connection of the said person under Condition No. 6.14. In fact, similar view was expressed even by yet another Division Bench of this Court in W.P. No. 4862/ 74, dated 4-10-1976. It may also be relevant to look at Condition No. 6.14 of the Terms and Conditions of Supply as it existed, which had fallen for consideration in the decision referred (AIR 1980 Andh Pra 12) supra and the said provision reads as follows (para 1) :

"Where any consumer having more than one service defaults in payment of dues relating to one of the services and U.C.M. charges due in respect of any new connection, the Board may cause the other services also to be disconnected till all the arrears due on all services and arrears of U.C.M. charges in respect of the

new connection are paid notwithstanding the fact that the services are separate and are covered by private agreements and notwithstanding that one or other of the services is under disconnection for non-payment of charges or other reason."

In the above provision, the words ".....notwithstanding the fact that the services are separate and are covered by private agreements and notwithstanding that one or other of the services is under disconnection for non-payment of charges or other reason", assume importance. As already observed by me though the language of both the provisions cannot be said to be exactly similar or identical, the underlying principle is one and the same. That being so, I have no hesitation to hold that the Board is not entitled to proceed with the disconnection of other service connections of the consumer on the ground that there was default of payment of arrears relating to a partnership firm in which the consumer had been one of the partners. Inasmuch as the petitioners in W.P. No. 16092/96, by virtue of interim direction also had deposited Rs. 5000/- each, it is needless to mention that the Board has to adjust the same in accordance with the wishes of the consumers. It is also needless to observe that the Board is at liberty to proceed against the registered consumers in accordance with law. In the light of the above discussion, the Writ Petitioners are bound to succeed and accordingly both the Writ Petitions are allowed. But however, in the peculiar facts and circumstances, no order as to costs.

12. That Rule Nisi has been made absolute as above.

13. Witness the Hon'ble Sri Dr. AR. Lakshmanan, the Chief Justice on this Thursday the Thirty First day of January, Two thousand two.