

(2011) 09 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5616 of 1993 and 1902 of 2001

Sithani Textiles and Fabrics Pvt. Ltd. and Others

APPELLANT

Vs

The A.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Electricity (Supply) Act, 1948 — Section 26, 3(2), 49, 5, 79

Electricity Act, 1910 — Section 10, 11, 2, 21(2), 21(3)

State Financial Corporations Act, 1951 — Section 29

Citation : (2011) 6 ALD 569

Hon'ble Judges : V.V.S. Rao, J;K.G. Shankar, J

Bench : Division Bench

Advocate : Duba V.N. Babu, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The issue that falls for consideration in the appeal as well as the writ petition being the same, both is heard together. Hence, this common orders. In the case of a High Tension (HT) consumer who has already paid service line charges as per the terms and conditions of supply, whether the subsequent purchaser of the industry/business is again required to pay service line charges to the Andhra Pradesh State Electricity Board (APSEB) (now Andhra Pradesh Transmission Corporation)? This is the short question that would fall for consideration.

2. The admitted facts in the writ appeal (we would refer the parties as in the writ petition, being W.P. No. 1725 of 1991, against which the writ appeal is filed) are as follows. M/S. Tibrewala Steels Limited, Pathancheru, was a steel re-rolling unit. They were availing 120 KVA HT power supply from APSEB. The unit became sick. The Petitioner purchased the unit along with all the assets. The Petitioner applied for restoration of power supply. By proceedings dated 13.05.1986 the first Respondent directed the Petitioner to execute HT agreement. The Petitioner

complied with the requirements and also paid consumption deposit. The power supply was not restored. By a communication dated 26.02.1991 the Petitioner was asked to pay service line charges in a sum of Rs. 1,04,500/-. Aggrieved by the same, the Petitioner filed W.P. No. 1725 of 1991 seeking a writ of mandamus declaring the action of the Respondents in requiring the Petitioner to pay the service line charges as illegal and arbitrary. APSEB opposed the writ petition, inter alia, contending that as the supply of electricity to the Petitioner is a fresh connection, it is bound to pay the service line charges as per B.P. Ms. No. 1160, dated 03.11.1989, which was subsequently modified by B.P. Ms. No. 297, dated 26.12.1990. They also contended that as the unit was supplied 220 KVA, the Petitioner is liable to pay the service line charges.

3. Learned single Judge allowed the writ petition observing that if additional load is connected over and above 120 KVA it will be open to APSEB to collect service line charges in accordance with the rules treating it as new unit, but collection of service line charges which are already collected from Tibrewala Steels Limited is unjustified. The writ petition was accordingly allowed.

4. The Petitioner in the writ petition, being W.P. No. 5616 of 1993, purchased a sick unit M/S. Dakshin Fabrics (P) Limited in Majeedpar Village in the auction conducted by the Andhra Pradesh State Financial Corporation (APSFC) u/s 29 of the State Financial Corporations Act, 1951. After taking possession of the unit, the Petitioner approached the Divisional Engineer, Kukatpally, for obtaining reconnection of HT power supply. The application was processed and by memo dated 31.03.1993 the Petitioner was advised by SE to pay an amount of Rs. 1,32,440/- towards non-refundable service line charges. Aggrieved by the same, the writ petition was filed. When it was listed before the learned single Judge, it was directed to be posted along with the writ appeal.

5. In the counter affidavit filed by the Divisional Engineer it is stated that as the HT agreement with M/S. Dakshin Fabrics (P) Limited was terminated, the Petitioner shall be treated as a new consumer; and that the amounts paid by the previous consumer has to be adjusted towards the dues and for dismantling the service line. The Divisional Engineer would further submit that as per Clause 6.7 of the terms and conditions of supply, the Petitioner is bound to pay the service line charges.

6. The Standing Counsel for the A.P. Transco would submit that after termination of the supply agreement with the previous consumer, under a new HT agreement power supply was restored to the purchaser, and therefore, it amounts to new connection. He also relies on the terms and conditions of supply and the decision of the Supreme Court in *Isha Marbles Vs. Bihar State Electricity Board and Another*, .

7. Per contra, the Counsel for the consumers would submit that as per the provisions of the Indian Electricity Act, 1910 (Electricity Act), the Electricity (Supply) Act, 1948 (Electricity Supply Act), and the terms and conditions of

supply of electricity (terms and conditions), the licensee i.e., APSEB/A.P. Transco is authorized to collect service line charges at the time of giving a fresh connection, and therefore, when the consumers subsequently purchased and started sick units, any levy of service line charges is illegal. He also relies on B.P. Ms. No. 1160, dated 03.11.1989, and B.P. Ms. No. 297, dated 26.12.1990.

8. In the light of these submissions, the point that would arise for consideration is whether the requirement to pay service line charges by the consumers as pre-condition for releasing power supply is justified.

9. The following assumptions are not seriously disputed. A person licensed to supply electrical energy u/s 3(1) of the Electricity Act can alone engage in the business of generating, transmitting or supplying electrical energy. APSEB by reason of Sections 5 and 26 of the Electricity Supply Act is deemed to be a licensee. Section 49 of the Electricity Supply Act empowers the Electricity Board, inter alia, to fix the tariffs and provide for terms and conditions of supply to Low Tension/High Tension consumers. While fixing the tariff or laying down terms and conditions, the Electricity Board has to comply with the provisions of the Electricity Act and Electricity Supply Act and rules made there under. Section 26 of the Electricity Supply Act reads as under.

26. Board to have powers and obligations of licensee under Act 9 of 1910: Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910), and this Act shall be deemed to be the license of the Board for the purposes of that Act.

Provided that nothing in Sections 3 to 11, Sub-sections (2) and (3) of Section 21 and Section 22, Sub-section (2) of Section 22A and Sections 23 and 27 of that Act or in Clauses I to V, Clause VII and Clauses IX to XII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board.

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

10. A plain reading of the above would show that the Electricity Board shall have all powers and obligations of a licensee under the Electricity Act, and the Electricity Supply Act shall be deemed to be the license for the purpose of Electricity Act. This, however (as per the first proviso), is subject to condition that Sections 3 to 11, 21(2) and (3), 22, 22A(2), 23 and 27 or in Clauses I to V, Clause VII and Clauses IX to XII of the Schedule to the Electricity Act relating to the duties and obligations of a licensee shall not apply to a State Electricity Board. As per the second proviso Clause VI of the Schedule applies in respect of that area where the distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

11. Clause VI of the Schedule to the Electricity Act which has been specifically

made applicable to the Electricity Board, to the extent relevant, reads as under.

VI. Requisition for supply to owners or occupiers in vicinity:(1) Where after distributing mains have been laid down under the provisions of clause IV or clause v. and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, without one month from the making of the requisition or within such longer period as the Electrical Inspector may allow, supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition.

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition; and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond on hundred feet from the licensee's distributing main although not on that property;

(Proviso 2 and 3 are omitted as not necessary for our purposes.)

Provided, fourthly, that, if any requisition is made for supply of energy and the licensee can prove, to the satisfaction of an Electrical Inspector,

(a) that the nearest distributing main is already loaded up to its full current carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity.

the licensee may refuse to accede to the requisition for such reasonable period not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or lying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of requisition under Sub-clause (1) shall, notwithstanding that a portion of it may have been

paid for by the person making the requisition, be maintained by the licensee who shall also have the right to use it for the supply of energy to any other person.

12. Section 3(1) of the Electricity Act empowers the State Government to grant license to any person to supply energy in any specified area and also lay down or place electricity supply lines for the conveyance and transmission of energy. Sub-section (2) thereof stipulates that the provisions in Section 3(2)(a) to (f) would apply to every license. Clause (f) further states that the provisions contained in the Schedule shall be deemed to be incorporated in every license issued u/s 3(1) of the Electricity Act for conveyance and transmission of energy. Section 2(i) of the Electricity Act defines "main" as any electric supply line through which energy is, or is intended to be supplied to the public. "Distribution main" is defined in Section 2(e) of the Electricity Act as to mean, the portion of any main with which a service line is connected, and as per Section 2(l), "service line" means any electric supply line through which energy is, or is intended to be supplied to a single consumer either from a distributing main or from a distributing main to a group of consumers on the same premises or adjoining premises. With this background, we may now consider the effect of clause VI of the Schedule on the issue involved in these cases.

13. The Schedule contains the provisions which are deemed to be incorporated in every license granted u/s 3 of the Electricity Act. These provisions create obligation on the licensee in relation to development and infrastructure, furnishing security for execution of works, provide for audit of accounts, development of transmission network like supply lines and distribution mains. Clause VI, the relevant provision of which is extracted above, contains five sub clauses. These deal with the obligations of a licensee to supply energy whenever a requisition is made by the owner or occupier of any premises situated within the area of supply which, i.e., as per Section 2(b) of the Electricity Act means, the area within which alone a licensee is for the time being authorized by his license to supply energy.

14. The following necessities, to be fulfilled by a prospective consumer for availing power supply as incorporated in Clause VI have been summarized in Shiva Gopal's Law Relating to Electricity, 6th Edition. These have been quoted with approval by the Supreme Court in Isha Marbles, as follows.

(1) A prospective consumer shall make and sign a requisition in the form prescribed by the rules (Annexure VII to the Rules) for a connection of his premises for the supply of energy.

(2) The licensee shall then serve on the prospective consumer a notice requesting him in writing to tender to him a written contract (in such form as the State Government may have approved).

(3) The prospective consumer shall within 14 days of the receipt of such notice tender the contract duly executed by him with sufficient security, binding himself there under to take a supply of energy for not less than two years to such

amount as will secure to the licensee at the current rates charged by him in annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition.

(4) In addition to the security, the licensee may also require the prospective consumer to pay to him the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the premises required to be connected, and of so much of any service line as may be laid down or placed for the purposes of the supply upon the premises required to be connected, and of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that premises.

(5) If the prospective consumer fails to tender the written contract duly executed, fails to give sufficient security and fails to give the cost demanded within the said period of 14 days, the licensee shall be under no obligation to make the connection.

(6) But if these formalities have been complied with the licensee shall be bound to make the supply within one month or such extended time as the Electrical Inspector may allow, the period to be counted from the date of receipt by the licensee of the requisition.

(7) and after the connection has been made the licensee shall be bound to continue the supply unless he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

15. The various provisions referred to above do not require a person requisitioning power supply to pay service line charges whenever power is disconnected and reconnected. These provisions also do not authorize the licensee to demand security from the consumer to take supply for not less than two years to such amount not exceeding 15%. The law does not empower the licensee to demand more security than what is contemplated or demand more service line charges. The exercise of power by the Board u/s 49 of the Electricity Supply Act in fixing the tariffs, prescribing various charges as a condition to make supply available shall have to be within the permissible limits as referred to supra. The APSEB, as noticed supra, constituted u/s 5 of the Electricity Supply Act is deemed to be licensee u/s 26 and shall also be, inter alia, bound by the obligations cast on them under various provisions of the Electricity Act and the Schedule.

16. There is no dispute that APSEB issued B.P. Ms. No. 1160 for collection of service line charges. These guidelines/rates were modified in B.P. Ms. No. 297, dated 26.12.1990. The two Board proceedings were issued in exercise of powers u/s 49 read with Section 79(f) of the Electricity Supply Act. Therefore, they are statutory in nature, and as they deal with levying charges for supply of electricity as per the conditions of license granted under the Electricity Act, they need to be interpreted strictly. The two Board proceedings nowhere lay down that the cost of

service line can be collected twice. The Board under Clause VI(1) can collect the cost of the service line only once at the time of release of power supply. Irrespective of the change of ownership of the business premises, unless there is a demand for increased energy supply or service line is dismantled for technical reasons, the collection of cost of service line repeatedly is not permissible.

17. In *Isha Marbles* somewhat similar question arose before the Supreme Court. The facts therein in brief may be noticed. The Electricity Board gave power supply. The consumer who availed power supply had mortgaged the assets to the State Financial Corporation. When there was a default, the mortgaged assets were put to sale in open auction. The Appellant purchased the assets and got possession. By that time the Electricity Board had disconnected the power supply. When the Appellant sought restoration of power supply he was asked to discharge all the liabilities of previous consumer. When the same was challenged, the High Court dismissed the writ petition, aggrieved by which, *Isha Marbles* went in appeal. The same was heard along with other appeals. After referring to Section 3(2)(f), Clause VI of the Schedule, other provisions of the Electricity Act and the Electricity Supply Act, the Supreme Court held that, "though the purchasers asked for electricity connection as a new connection it cannot be regarded as a new connection. It is only a reconnection since the premises had already been supplied with electrical energy. Such a supply had been disconnected owing to the default of the consumer. That consumer had bound himself to the Board to play the dues. He also agreed to abide by the condition as stipulated in the Act and the Rules including the payment of dues." Therefore, the Electricity Board could resort to Section 24 of the Electricity Act and disconnect the power supply and/or file a suit for recovery of the dues. But, it could not collect the past arrears from the auction purchaser. The relevant observations are as under.

...Where that premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party....

...But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest....

18. The Standing Counsel placed reliance on the Division Bench judgment dated 09.04.2010 in *W.A. Nos. 37 and 1053 of 2001 The K.C.P. Ltd., Ramakrishna Cements v. The Andhra Pradesh State Electricity Board*. We have perused the

judgment. It is a case of the Electricity Board demanding service line charges after the consumer requisitioned for additional load of 3000 KVA over and above the existing demand of 8000 KVA. The demand was justified placing reliance on B.P. Ms. No. 1160, dated 03.11.1989. In the case on hand, learned single Judge also gave liberty to the Electricity Board to levy and collect service line charges in case a requisition is made by the Respondent for additional load. As found, the Board failed to place any material before the Court in support of their contention that additional load was connected over and above 120 KVA. The Writ Appeal, therefore, fails, and the Writ Petition must succeed.

19. Accordingly, the writ appeal is dismissed, and the writ petition is allowed holding that it will not be necessary for the Petitioners to pay the service line charges in the event of not requisitioning additional load. The amount paid, if any, during the pendency of these proceedings shall be refunded or adjusted. There shall be no order as to costs.