

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 6423 of 2023****Between:**

K.Rama Devi

... Petitioner

And

TSPDCT Ltd. and others

... Respondents

JUDGMENT PRONOUNCED ON: 30.10.2023**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 6423 of 2023

% 30.10.2023

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K.Rama Devi

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mrs K.Jayasree

^ Standing counsel for Respondents : Mr Mr R.Vinod Reddy

? Cases Referred:

1. (2020) 4 SCC 650

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. NO. 6423 OF 2023****ORDER :**

Heard Mrs K.Jayasree, learned Counsel appearing on behalf of the Petitioner and Mr R.Vinod Reddy, learned standing counsel appearing on behalf of the respondents.

2. This writ petition is filed to issue a writ or order of direction more particularly one in the nature of Writ of Mandamus declaring (a) distraint notices dated nil issued to the petitioner in respect of Service Connection bearing Nos. 5122400061, 5122400065, 5122400066 and 5122400068 (b) order of the 6th respondent dated 03.01.2023 in Appeal No.20/2022-23 and notice in letter No.AAO/ERO/CPL/JAO/Billing/D.No.607/22, dated 20.01.2023 of the 4th respondent as highly illegal, arbitrary, unjust, irrational, void and contrary to Section 56(2) of the Electricity Act, 2003 apart from being violative of Articles 14, 19(1)(g), 21, 265 and 300A of the Constitution of India and consequently, set aside the same.

PERUSED THE RECORD

3. The counter affidavit is filed by respondents 2, 3 and 5, in particular, paras 6, 9 and 10 read as under:

"6 It is submitted that as the services were not surrendered in the year 1999 as contended by the petitioner and also as the petitioner has not applied to dismantlement of service connections as per General Terms and Conditions of Supply the bills will be continued to be raised till the service connections are live as the power supply to the service connections was being provided till April 2013 an amount of Rs. 625/- is added as outstanding to each service connection till May 2013 and the above arrears are the bills raised till April 2013. The petitioner was repeatedly informed to clear all the bills but has refused.

9. It is submitted that the petitioner has filed an Appeal bearing No. 20/2022- 23 before the Vidyut Ombudsman against the orders of the CGRF and has held that as per the Memo dated 11.03.2015 of the Chief General Manager, Commercial, the petitioner being an Income Tax assessee cannot be provided with free power supply. The ombudsman has further held that the petitioner is not entitled for any reversion of the bills for power supply as she did not comply with the stipulated conditions to avail the benefits of tariff of power supply to the agriculture service connection. The ombudsman has taking into consideration the fact that the petitioner has applied for dismantling of service connection on

23.01.2020 in the Consumer service centre hence the respondents are entitled to demand the arrears before dismantling the service connections.

10. It is submitted that the petitioner having suffered two consequential orders before the competent Forum established under the Electricity Act, 2003 has again raised the same pleas before this Honourable Court. The CGRF and the Vidyut Ombudsman being expert bodies have technically qualified persons as their members and their orders are passed after examining the billing disputes by verifying the records and the applicable provisions of the GTCS, the tariff orders issued by the TSERC and the provisions of the Electricity Act, 2003."

4. Reply affidavit has been filed by the petitioner to the counter filed by respondents 2, 3 and 5 denying the averments made in the counter affidavit.

DISCUSSION AND CONCLUSION

DISCUSSION

5. It is the specific case of the petitioner that the petitioner purchased land to an extent of Ac.26.07 gts situated in Toopranpet Village, Choutuppal Mandal, Nalgonda District in the year 1992 for carrying out agricultural operations and

there were three bore wells existing for providing water facility to the crops. Even before the petitioner had purchased the said land, the previous owner had obtained 4 L.T Agricultural Service connections bearing Nos. 5122400061, 5122400065, 5122400066 and 5122400068 from the erstwhile APSEB. It is further the case of the petitioner that though the petitioner carried out agricultural operations till the year 1999, the petitioner stopped the same in the year 1999 and in the very same year, the petitioner executed Gift Settlement Deeds in favour of the petitioner's husband, petitioner's son and daughter and the petitioner thereafter, did not receive any bills in respect of the LT service connections.

6. It is further the case of the petitioner that after a long lapse of time during the year 2015, the petitioner received a telephone call from the office of the 4th respondent requiring the petitioner to meet the then Assistant Divisional Engineer. In response thereto, the petitioner and her husband met the Assistant Divisional Engineer, who informed the petitioner that during the period 1999 to 11th December, 2015, some bills had been raised in respect of the said service connections and the petitioner had to pay the same. Yielding to the pressure

exerted by the Department, the petitioner had paid a sum of Rs.29,750/- for each service connection and to the shock of the petitioner, the petitioner received notices alleging a sum of Rs.1,93,062/- as due in respect of service connection No.5122400061, a sum of Rs.1,55,748/- as due in respect of service connection No.5122400066, a sum of Rs. Rs.1,55,748/- as due in respect of service connection No.5122400068, and a sum of Rs.1,93,042/- as due in respect of service connection No.5122400065. Aggrieved by the same, the petitioner approached the Consumer Grievances Redressal Forum-I, Revenue, Rural, TSSPDCL, Erragadda, Hyderabad i.e the 5th respondent herein and filed a complaint.

7. The 5th respondent after examining the complaint filed by the petitioner, written submissions and documents and after hearing both parties passed the award dated 24.08.2022 in CG No.30/2022-23/YADADRI BHONGIR CIRCLE as below:

"i. The crux of the Complaint is to withdraw the arrears on the 4 Nos. Agricultural Services from year 2000 onwards as it is stated that the complaint has transferred her land and stopped Agricultural operations. She has paid an amount of Rs.29,756/- on each service

and TSSPDCL website shows that her request for Dismantlement of service dated 23.01.2020 is rectified on 05.02.2020.

ii. At every stage, right from the Assistant Engineer/Operation to the Superintending Engineer/Operation, it was misinterpreted in the Complaint and stated that the proposal is for revision of bill under Agriculture free category instead IT payee/payment Category in Agriculture.

iii. The Superintending Engineer/Operation/Yadadri is directed to obtain the revised proposals/field report from the officers and pass appropriate orders on the request of the Complaint.

8. The 5th respondent considering all the contentions of both the parties on merits that as per Clause 8.4 of GTCS, the petitioner claims to have transferred the property through the Registered Deeds and the petitioner should clear all the dues, if not the respondent company can refuse to provide new service connection or restore the earlier service connection and the CGRF-I disposed of the complaint filed by the petitioner without granting any relief to the petitioner. Aggrieved by the said award dated 24.08.2022, passed by the 5th respondent, the petitioner preferred an appeal to the 6th respondent. The 6th respondent vide its award dated

03.01.2023 in Appeal No.20 of 2022-23 rejected the appeal filed by the petitioner and confirmed the award passed by the 5th respondent.

9. Learned counsel appearing on behalf of the petitioner putsforth mainly the following submissions:

- a) The petitioner is not liable to pay any amounts since in the year 1999 itself the LR agreements were terminated.
- b) The department cannot raise any bills for subsequent period since the service connections had been disconnected in the year 1999 itself.
- c) The arrears as alleged by respondent Nos. 2 to 4 are barred by limitation as per Section 56(2) of the Electricity Act, 2003 which clearly stipulates that no sum due from any consumer shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.
- d) The learned counsel for the petitioner placed reliance on the order dated 02.05.2018 passed in W.P.No.11676 of 2017

and contended that the writ petition should be allowed as prayed for.

10. Learned standing counsel appearing on behalf of the respondents Mr R.Vinod Reddy, submits that the plea of the petitioner that the bills cannot be raised against the petitioner subsequent to 1999 had been negatived by both respondent Nos.5 and 6 and therefore the petitioner is liable to pay the amounts as per the distraint notices issued to the petitioner in respect of service connections bearing Nos. 5122400061, 5122400065, 5122400066 and 5122400068.

CONCLUSION

11. **Section 56 (2) of the Electricity Act, 2003 reads as under:**

"Section 56: Disconnection of supply in default of payment.

(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.

12. The Apex Court in the judgment dated 18.02.2020 reported in (2020) 4 SCC 650 in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another v Rahamatullah Khan alias Rahamjulla, at paras 6.9, 7.4 and 7.5, observed as under:

“6.9 The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become ‘first due’ only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

7.4 Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues. This statutory right is subject to the period of limitation of two years provided by sub-Section (2) of Section 56 of the Act.

7.5 The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of [Section 56](#). This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed

to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2).

13. This Court dealing with a similar situation in its judgment dated 02.05.2018 in W.P.No.11676 of 2007 observed as under at paras 8 and 9:

"8. In the facts and circumstances of the case and in considered view of this Court, the C.C. bills are pertaining to the year 1987 onwards till the termination of the agreement on 21.12.1998. Thereafter, no bills were raised, much less indicating the arrears of dues in the C.C. bills, except the impugned notices. The power supply was disconnected on 09.02.1998 in spite of part payment of the bills as per the orders of this Court. Hence, the impugned demand of payment of electricity bills raised by the respondents is barred by limitation and not recoverable under Section 56(2) of the Electricity Act, 2003. The Section 56(2) of the Act reads as under:

"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."

The alleged dues could not be recovered under the provisions of Andhra Pradesh Revenue Recovery Act and under Section 6 of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984.

9. Therefore, the impugned demand notices raised by the second respondent in Lr.No.SE/OP/RRC/N/SAO/HT/D.No.61/2006 dated 06.12.2006 and Lr.No. SE/OP/RRC/N/SAO/HT /D.No.194/07 dated 24.02.2007 and the subsequent Letter No. SE/OP/RRC/N/ SAO/HT/D.No.248/07 dated 7/12.04.2007, are set aside by holding that the same are barred by limitation and issued contrary to Section 56(2) of the Act and unenforceable.

14. This Court opines that the purport of Section 56(2) of the Electricity Act, 2003 very clearly indicates that if any dues are pending, the said dues shall be continuously shown in the bills or else the claim of the department gets barred. In the present case, admittedly and evidently as borne on record no bills were issued to the petitioner even since 1999 and therefore, the 6th respondent is bound to reconsider the case of the petitioner duly taking into consideration Section 56(2) of the Electricity Act, 2003, duly considering the view taken by the Apex Court in the judgment dated 18.02.2020 reported in (2020) 4 SCC 650 in Assistant Engineer (D1),Ajmer Vidyut Vitran Nigam Limited and another v Rahamatullah Khan alias Rahamjulla.

15. This Court opines that respondent Nos. 5 and 6 did not consider the plea of the petitioner duly considering Section 56(2) of the Electricity Act, 2003. Even according to para 6 of the counter affidavit, it is contended by respondent Nos. 2, 3 and 5 that the bills were raised till April, 2013 and the service connections had been alive till April, 2013 and not thereafter. Whereas, according to the petitioner, the petitioner had surrendered the service connections in the year 1999 itself. A bare perusal of the order impugned of the 6th respondent clearly observed that the service connections were under bill stopped category during the month of May, 2013 and respondent Nos.5 and 6 as borne on record did not give any finding considering the petitioner's case in so far as applicability of Section 56(2) of the Electricity Act, 2003 is concerned and no finding had been arrived at by respondent Nos.5 and 6 herein in so far as issuance of regular bills to the petitioner by the Department for the period from 1999 to April, 2013 is concerned reflecting the said dues continuously in the bills issued to the petitioner, if any,

since the petitioner specifically pleaded in the reply affidavit to the counter affidavit filed by respondent Nos. 2, 3 and 5 that no bills had been issued to the petitioner since 1999.

16. Taking into consideration the aforesaid facts and circumstances of the case and duly considering the view of the Apex Court in its judgment dated 18.02.2020 reported in 2020 (4) SCC page 650 in Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Ltd and another v Rahamatullakhan alias Rahamjulla and also the view of this Court in its judgment dated 02.05.2018 passed in W.P.No.11676 of 2007, the impugned order of the 6th respondent dated 03.01.2023 in Appeal No.20/2022-23 and consequential notice dated 20.01.2023 of the 4th respondent vide letter No.AAO/ERO/CPL/JAO/ Billing /D.No.607/22 calling upon the petitioner to pay total arrears amount of agricultural connections bearing Nos. 5122400061, 5122400065, 5122400066 and 5122400068 placing reliance on the order of the 6th respondent dated 03.01.2023 in Appeal No.20/2022-23 are set aside and

the 6th respondent is directed to re-consider the whole issue in conformity with principles of natural justice by providing reasonable opportunity to both the petitioner and also respondent Nos. 2, 3 and 4 and pass appropriate orders, in accordance to law, within a period of four weeks from the date of receipt of copy of this order. Till the exercise as stipulated by this Court is undertaken and concluded by the 6th respondent, respondent Nos. 2, 3 and 4 shall not initiate any coercive steps against the petitioner in pursuance to the distraint notices issued to the petitioner in respect of service connection bearing Nos. 5122400061, 5122400065, 5122400066 and 5122400068. With these observations, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 30.10.2023

Note: L.R.Copy to be marked.
b/o kvrm