

B. Laxmi Vs. Assistant Divisional Engineer (Op), Northern Power Distribution Co. of A.P. Ltd. and anr.

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Court : Andhra Pradesh

Decided On : Dec-04-2003

Reported in : 2004(1)ALD546

Judge : V.V.S. Rao, J.

Acts : [Electricity Act, 2003](#) - Sections 126, 126(1), 126(4), 126(5) and 135

Appeal No. : WP No. 25383 of 2003

Appellant : B. Laxmi

Respondent : Assistant Divisional Engineer (Op), Northern Power Distribution Co. of A.P. Ltd. and anr.

Advocate for Def. : K. Ravindra Kumar, SC

Advocate for Pet/Ap. : Jalli Siddaiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.V.S. Rao, J.

1. The petitioner is availing power supply from Northern Power Distribution Company under Category-II with service connection No. 4511. Her premises was inspected by the 1st respondent on 25.11.2003. It was found that bare copper wire was connected from incoming terminal to outgoing terminal in the meter and that the meter box seal and MRT seals are in tampered condition and therefore the 1st respondent came to the conclusion that the petitioner indulged in theft of energy. Accordingly, he provisionally assessed the value of the energy pilfered at Rs. 68,445/- and disconnected the power supply and issued the impugned provisional assessment notice dated 29.11.2003 advising the petitioner to pay an amount of Rs. 68,445/- being the value of the pilfered energy and other incidental charges if she desires to obtain restoration of power supply. This is assailed in the writ petition.

2. Sri B. Papa Rao, the learned advocate representing the Counsel for the petitioner Sri J. Siddaiah submits that the impugned assessment notice is not in accordance with law. He specially invites the attention of this Court to Section 126 of the [Electricity Act, 2003](#) ('the Act' for brevity). He contends that even if the allegations of pilferage are true, the 1st respondent can only assess the value of pilfered energy at a rate equal to 1 1/2 times taking into consideration the average consumption for a period of six months preceding the date of inspection.

3. Before advertng to the purport of Section 126 of the Act, this Court may refer to the revised terms and conditions of supply of electrical energy framed vide B.P. Ms. No. 690 dated 17.9.1975 by the erstwhile A. P. State Electricity Board as it is not denied that supply of electricity to petitioner is governed by then conditions of supply. Condition No. 39 deals with malpractices including pilferage of energy. Pilferage of energy is to be dealt with by the officials of the respondent company in accordance with Conditions 39 to 39.7.3.2 of the terms and conditions of supply, if the connection is a non-industrial and non-agricultural connection. Condition 39.6 reads as under :

39.6 Provisional assessment of the loss sustained by the Board and payment:--
The inspecting officer shall make a provisional estimate of the loss incurred by the Board by the reason of the malpractice or pilferage of energy committed by the

consumer which shall be assessed as mentioned herein below and intimated to the Assistant Divisional Engineer concerned. The A.D.E. concerned shall ensure disconnection of such services forthwith in the case of malpractice with reference to supply of electricity to any disconnected service or pilferage of energy. The Assistant Divisional Engineer shall then serve the consumer with a notice of provisional assessment in the prescribed form. Such notice shall mention, inter alia,--

(a) the matters noticed during the inspection of the consumer's premises and installations;

(b) The reasons for disconnection already effected or proposed to be effected; and

(c) A provisional estimate of the loss sustained by the Board computed in the prescribed manner.

He shall inform the consumer to pay half of the provisionally assessed amount, pending the enquiry to be conducted by the concerned authority into the case, to secure restoration of supply where supply has been disconnected or to avoid discontinuance of supply where disconnection has not been effected. If such payment is made the consumer's service shall not be disconnected on this ground pending the enquiry.'

4. A plain reading of the above condition would show that after inspecting the premises, the Assistant Divisional Engineer shall serve a notice of provisional assessment in the prescribed form. Such notice shall contain the matters noticed during inspection of the consumer's premises, reasons for disconnection and the provisional assessment of the loss sustained by the Board computed in accordance with condition No. 39.7. It is also provided that the Assistant Divisional Engineer shall inform the consumer to pay half of the provisional assessment amount pending the enquiry to be conducted by the competent authority.

5. After coming into force of the Electricity Act 2003, the cases of unauthorized use of electricity/pilferage are to be dealt within the same manner as provided under Condition No. 39.6 but with slight variation. Be it also noted that under the new

Act, theft of electricity is a cognizable offence attracting the punishment of imposing of fine and also imprisonment for a term, which may extend to three years. Section 126 deals with assessment of the value of the pilfered energy. It is expedient to read Section 126 in toto.

126. Assessment:--(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices in found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in-charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under Sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one and half times the tariff applicable for the relevant category of services specified in Sub-section (5).'

6. Sub-section (1) of Section 126 is effect, a new incarnation of Condition No. 39.6. The entire Section 126 does not contain any clause that consumer has to pay half of the provisionally assessed amount for availing the restoration of power supply. There cannot be any doubt that as and when the 'Assessing Officer' (as appointed by the State or the Board) serves a notice of provisional assessment, the consumer has no choice but has to deposit the entire amount provisionally assessed. In case a person accepts the provisional assessment without any demur and deposits the amount within 7 days of service of provisional assessment order, such a person shall not be subjected to further liability and no action can be taken against him including the action under Section 135 of the Act. What is the method of assessing the value of pilfered energy?

7. The learned Counsel for the petitioner Sri B. Papa Rao strongly relies on Sub-section (5) of Section 126 of the Act to contend that the provisional assessment should be made taking into consideration three months average consumption preceding the date of inspection in the case of domestic and agricultural services and six months average consumption for other categories of services. I am afraid, the submission is wholly misconceived and ignores true purport of Sub-section (5). Sub-section (1) of Section 126 authorises the assessing officer to inspect any place or premises, gadgets, machines, devices and may come to a conclusion that the consumer is indulging in unauthorized use of electricity. In such a case, the assessing officer has to provisionally assess to the best of his judgment, the electricity charges payable by such person. After so doing, such provisional assessment order has to be served on the person who under Sub-section (3) is entitled to file objections against the provisional assessment order before the assessing officer. The assessing officer may then afford an opportunity and pass a final order of assessment of the electricity charges payable by such person. Sub-sections (1) to (4) do not compel the person to pay any amount if he wants to file objections and invite a final assessment order. The payment of provisionally assessed amount arises only when a consumer seeks restoration of power supply.

8. In assessing the value of the energy provisionally, as seen from Sub-section (1) of Section 126, the assessing officer has to do it to the best of his judgment. The power of assessing officer is not controlled or circumscribed by Sub-section (5). Sub-section (5) of Section 126 as read above, takes care of altogether a different situation. It contains a deeming provision; a presumption. If the assessing officer has no proper material or mechanism used or pilferage of energy is of such nature that the assessing officer cannot reasonably fix the period during which there has been unauthorized use of electricity, in such cases, he can presume that there has been continuous unauthorized use of energy for a period of six months or three months as the case may be. The presumption contained in Sub-section (5) does not in any manner prevent or prohibit the assessing officer while provisionally assessing the electricity charges payable by such person under Sub-section (1) of Section 126 after determining actual energy pilfered.

9. Sub-section (6) of Section 126 stipulates that the assessment of value of the energy pilfered should be made at the rate equal to 1 1/2 times the tariff applicable to relevant category of services. That means, if the tariff rate is Rs. 6/- per unit after arriving at the total number of units of energy unauthorisedly used or pilfered, the value is to be assessed by applying the tariff rate at Rs. 9/-. To that extent, the learned Counsel for the petitioner is not correct in submitting and under no circumstances, the assessment can exceed 1 1/2 times the actual amount payable. Be it also noted that when the provision is not ambiguous or does not admit two interpretations, the Court should adopt the method of literal construction and must not introduce new concepts or new principles.

10. In this case, the advice that the petitioner should pay half of the amount to seek restoration of power supply is conspicuous by its absence. Presumably the respondents are aware of Section 126 in the new Act and they did not follow, rightly so, condition No. 39.6 of the revised terms and conditions of supply of electricity. I do not therefore find any infirmity in the impugned order. If the petitioner is so advised, she has effective remedy under Sub-section (3) of Section 126 of the [Electricity Act, 2003](#) by filing objections before the assessing authority who shall thereafter afford a reasonable opportunity and pass final orders.

11. In view of the same, the writ petition is misconceived. It is accordingly dismissed. No costs.

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