

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

**Writ Petition No.16203 of 2004**

**Dated 30<sup>th</sup> June, 2010**

**Between:**

S.Sudarshanam

**...Petitioner**

**And**

The Assistant Divisional Engineer/Operations,  
Jangaon, Northern Poser Distribution Company of  
A.P.Ltd.,  
Warangal District and 2 others

**...Respondents**

**Counsel for the petitioner:  
Reddy**

**Mr.P.Prabhakar**

**Counsel for the respondents:**

**Mr.S.V.Ramana,  
for Mr.O.Manohar  
Reddy,  
SC for AP Transco**

**The Court made the following:**

**Order:**

This Writ Petition is filed for a Mandamus to set aside proceedings, dated 30-07-2004, of respondent No.3.

The petitioner is an LT Industrial consumer of the respondents. On 28-02-2003, the petitioner's service connection was inspected by respondent No.1 and it was found that the meter contained two holes on the top of the meter cover. Suspecting pilferage, the meter was seized and provisional assessment notice was issued on 19-12-2003 for a sum of Rs.1,42,072/-. Subsequently, show cause notice, dated 23-12-2003, was issued by respondent No.2 and the petitioner gave his reply on 23-01-2004. After considering the petitioner's explanation, respondent No.2 made final assessment of the loss allegedly sustained by the respondents at Rs.1,42,072/- by his order, dated 03-03-2004. The said order was questioned in an appeal filed before respondent No.3. The said appeal was partly allowed by respondent No.3 by his order, dated 30-07-2004, whereby he reduced the liability of the petitioner to Rs.64,737/-. Feeling aggrieved by these orders, the

petitioner filed the present Writ Petition.

At the hearing, Sri P.Prabhakar Reddy, learned Counsel for the petitioner, advanced three contentions viz., (1) that the meter was neither seized in the presence of the petitioner nor under a panchanama and that at the time of meter testing, the petitioner was neither given notice nor the meter was opened in his presence; (2) that respondent No.3 has not made a proper assessment of the quantum of power allegedly pilfered by the petitioner and; (3) that the respondents committed an error in levying penalty at 3 times the normal charges instead of 1½ times as envisaged under the provisions of the Electricity Act, 2003 (for short 'the Act').

Sri S.V.Ramana, learned Counsel representing Sri.O.Manohar Reddy, learned Standing Counsel for the respondents, opposed these contentions and submitted that no illegalities or irregularities have been committed either at the time of seizure of the meter or at the time of its testing. He submitted that the petitioner was present both at the time of seizure and also at the time of meter testing. The learned Counsel further contended that respondent No.3 has adopted a realistic approach in assessing the quantum of electricity pilfered by the petitioner and that as the inspection has taken place on 28-02-2003, which was prior to the commencement of the Act, the petitioner is liable to pay 3 times the normal charges as penalty as applicable at the time of inspection.

As regards the first contention of the learned Counsel for the petitioner, it is stated in the counter-affidavit filed by the Chief General Manager of A.P.Northern Power Distribution Company Limited, Warangal, that at the time of inspection, the petitioner was present and has testified on the inspection notes and

recorded a statement that there are two holes existing on the meter. It is further stated therein that on 17-12-2003, the meter was tested in the presence of the consumer, the Assistant Engineer/Operation/Devaruppala and the Assistant Divisional Engineer/Operation/Jangaon.

No reply-affidavit is filed by the petitioner controverting these averments. Therefore, I find no merit in the first contention advanced by the learned Counsel for the petitioner.

With regard to the second contention, a perusal of the order passed by respondent No.3- appellate authority would go to show that while reducing the final assessment amount from 1,42,072/- to Rs.64,737/-, he has taken into consideration the consumption particulars furnished by the petitioner for the period from the date prior to the inspection till the date of inspection *i.e.*, from 4/95 to 12/2003 and has arrived at the conclusion that the petitioner would have run his flour mill on an average for 2 hours a day and has accordingly, arrived at a total of 5576 units for a period of 300 days. In my opinion, the method adopted by respondent No.3 appears to be very realistic and the same cannot be said to be either arbitrary or irrational. Therefore, the second contention of the learned Counsel for the petitioner is also rejected.

Coming to the third contention, admittedly, inspection has taken place on 28-02-2003 whereas the Act came into force with effect from 10-06-2003. Thus, prior to the commencement of the Act, the petitioner has already committed the act of pilferage and thereby, incurred his liability. Therefore, the benefit of

reducing penalty under the provisions of the Act cannot be extended to the petitioner. Admittedly, under the conditions as in force during the time of pilferage, the consumer was liable to pay 3 times the normal charges as penalty. In this view of the matter, the third contention of the learned Counsel for the petitioner is equally unsustainable and the same is accordingly rejected.

For the above-mentioned reasons, I do not find any illegality or irregularity in the orders passed by respondent Nos.2 and 3 and the Writ Petition is accordingly dismissed.

As a sequel to dismissal of the Writ Petition, interim order, dated 10-09-2004, is vacated and WPMP.No.21151 of 2004 is disposed of as infructuous.

**C.V.NAGARJUNA REDDY, J**

**Dated 30<sup>th</sup> June, 2010**  
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