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(2014) 11 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No. 32906 of 2014

K. Mahender	APPELLANT
Vs	
The Telangana Southern Power Distribution Company Ltd.	RESPONDENT

Date of Decision: Nov. 5, 2014

Acts Referred:

- Electricity Act, 2003 - Section 108
- Hyderabad Municipal Corporation Act, 1955 - Section 455

Citation: (2015) 2 ALD 728 : (2015) 4 ALT 558

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: M.C. Acharyulu, Advocate for the Appellant; O. Manoher Reddy, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.
This Writ Petition is filed with the grievance that the respondents have been demanding electricity consumption charges at three times the normal electricity charges only on the ground that the petitioner did not secure Occupancy Certificate from the Greater Hyderabad Municipal Corporation of Hyderabad.

2. At the hearing, Sri O. Manoher Reddy, learned Standing Counsel for the Telangana Southern Power Distribution Company Limited (for short "the Company"), in all fairness, stated that there is no condition under the terms and conditions of supply of the Company, under which power supply was released and being continued to the petitioner, for levying the consumption charges in excess of the charges prescribed for the category

of supply under which the Service Connection was sanctioned to the petitioner except for theft of energy and other malpractices. He has, however, stated that the Government of Andhra Pradesh issued G.O.Ms. No. 86, Municipal Administration and Urban Development (M) Department, dated 03.03.2006, whereunder obtaining of Occupancy Certificate by every owner of the building is made mandatory and that the functional agencies dealing with electric power, water supply, drainage and sewerage shall not give regular connections to the building, unless such Occupancy Certificate is produced or alternatively, may charge three times the rate in the absence of Occupancy Certificate. He has further stated that the said G.O. was replaced with G.O. Ms. No. 168, dated 07.04.2002, and that Clause-26 of the said G.O. also reiterated the same position.

3. Learned Standing Counsel for the respondents referred to and relied upon Section 108 of the Electricity Act, 2003 (for short "the Act") in support of the action of the respondents in collecting higher tariff.

4. Section 108 of the Act reads as under,

(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

5. While undoubtedly the policy directions issued by the Government guide the State Electricity Regulatory Commission, it is not the pleaded case of the respondents that while approving the tariffs, the State Regulatory Commission has prescribed higher tariff for the consumers who fail to produce Occupancy Certificates.

6. In my opinion, so long as respondent No. 1, who is a licensee under the provisions of the Electricity Act, 2003, does not amend its supply regulations/conditions in tune with the Government policy qua levy and collection of tariff higher than that prescribed under its Regulations, such levy cannot be legally sustained. Being a licensee, it cannot charge its consumers higher tariff than what is prescribed by the tariff regulations, approved by the Regulatory Commission.

7. In this view of the matter, demand and collection of electricity consumption charges at three times the normal charges from the petitioner cannot be sustained and the same is declared as illegal. The respondents are directed to adjust the excess tariff, if any, collected so far, from the petitioner"s future C.C. bills.

8. Before closing this case, this Court feels it imperative to observe that the petitioner cannot violate law and insist on the power distribution licensee to continue to supply power to it without obtaining Occupancy Certificate, which, admittedly, is a mandatory requirement under Section 455of the Greater Hyderabad Municipal Corporation Act,

1955. The respondents are, therefore, left free to call upon the petitioner to produce the Occupancy Certificate in accordance with the said provision within a stipulated time. If the petitioner fails to produce such certificate, they shall be free to disconnect the power supply to him and terminate the power supply agreement. The respondents are also left free to refuse release of power supply to other similarly situated consumers if they fail to produce Occupancy Certificates within a stipulated time.

9. Subject to the above directions and observations, the Writ Petition is allowed to the extent indicated above.

10. As a sequel, W.P.M.P. Nos. 41149 and 41150 of 2014, filed by the petitioner for interim relief, are disposed of as infructuous.