

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.1921 of 2012

Joseph Suji

... Appellant

Vs.

The Executive Engineer,
Batlagundu,
Tamil Nadu Electricity Board,
Dindigul District.

... Respondent

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 24.08.2011 made in W.P.No.20785 of 2004 presented under Art.226 of the constitution of India issue a writ certiorari or any other writ or order or direction in the nature of writ calling for the records relating to the order bearing No.EE/BTL/TAII /F.Theft/ D.No.1425/ 0405, dated 30.06.2004, on the file of the Executive Engineer, Batlagundu, Tamil Nadu Electricity Board, Dindigul District, and to quash the same.

For Appellant : Mr.A.R.Nixon
For Respondent : Mr.P.Gunaraj

JUDGMENT

(Delivered by N.PAUL VASANTHAKUMAR, J)

Heard Mr.A.R.Nixon, learned counsel appearing for the appellant and Mr.P.Gunaraj, learned counsel appearing for the respondent.

2. This writ appeal is filed against the order made in W.P.No.20785 of 2004, dated 24.8.2011, wherein the appellant has challenged the order of recovery dated 30.6.2004 ordering to pay a sum of Rs.4,02,732/- in ten instalments.

3. The case of appellant before the learned single Judge was that he is running a lodge in the name and style of Appus Cottage at Door No.61/364C, Fern Hill Road, Kodaikanal and he is having seven electrical connections for lodge, of which, one is a domestic connection for his residential portion. On 26.4.2004, the Assistant Executive Engineer, Distribution, Tamil Nadu Electricity Board,

Kodaikanal has inspected the premises and noted six connections were found to be in order and one connection was found to be running in a defective condition and arrived at the conclusion that there was theft of energy from the said connection. Thereafter, a show cause notice was issued and enquiry was also conducted. During enquiry, the appellant has produced documentary proof regarding his occupancy position and also details of energy consumption. However, the authority has passed an order on 30.6.2004 calling upon the appellant to pay a sum of Rs.4,02,732/- as extra levy. Aggrieved over the said order, the appellant has filed the writ petition to quash the above said order dated 30.6.2004.

4. The writ petition was opposed by the respondent by filing counter-affidavit, sustaining the order of levy dated 30.6.2004 passed by the respondent.

5. The learned single Judge dismissed the writ petition holding that the appellant has failed to comply and obey the conditional order of stay dated 29.9.2004 passed in W.P.M.P.No.25028 of 2004 directing the appellant to pay first three instalments within a period of two weeks.

6. It is to be pointed out that without filing an appeal initially against the order of assessment dated 30.6.2004 passed by the respondent, the appellant has filed the writ petition. As observed by the learned single Judge, in W.P.M.P.No.25028 of 2004, a conditional order was passed directing the appellant to pay first three instalments of Rs.40,275/- on or before 10.7.2004, Rs.40,273/- on or before 10.8.2004 and Rs.40,273/- on or before 10.9.2004 respectively. The said instalment amounts were not paid by the appellant. Hence, the learned single Judge dismissed the writ petition. Even though the said three instalment amounts were not paid by the appellant, the appellant has filed the appeal, which was permitted in the order of the assessment itself. The appeal was filed by the appellant on 05.3.2005 and the copy of the same is available in the typed set of papers filed in the writ appeal.

7. The learned counsel appearing for the appellant contends that the appellant may be granted liberty to pay the said three instalment amounts by lumpsum, within a period of one month and on such payment, the Superintending Engineer, Dindigul Electricity Distribution Circle, Dindigul may be directed to dispose of the appeal filed on 05.3.2005 on merits and in accordance with law.

8. The learned counsel appearing for the respondent submits that if the appellant is willing to pay first three instalments, as stated above, within a period of one month, the Appellate Authority is willing to consider the appeal dated 05.3.2005 on merits.

9. In view of the said submissions, the writ appeal is disposed of, granting liberty to the appellant to pay first three instalments mentioned in the assessment/recovery order dated 30.6.2004 amounting to Rs.1,20,821/- in lumpsum, within a period of one month from the date of receipt of a copy of this order. If the said amount is deposited as directed, the Appellate Authority, namely, the Superintending Engineer, Dindigul Electricity Distribution Circle, Tamil Nadu Electricity Board, Meenakshi Naickenpatty, Dindigul shall dispose of the appeal dated 05.3.2005 filed by the appellant and pass orders on merits and in accordance with law, within a period of three months from the date of deposit. If the said amount is not deposited, as stated supra, the appeal stands automatically dismissed without reference to the order of the Court. The above said three instalment amounts to be deposited shall be adjusted depending upon the orders to be passed in the appeal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Executive Engineer,
Batlagundu,
Tamil Nadu Electricity Board,
Dindigul District.
- 2.The Superintending Engineer,
Dindigul Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Meenakshi Naickenpatty,
Dindigul

+ 1 cc to Mr.A.R.Nixon, Advocate sR.1264
+ 1 cc to Mr.P.Gunaraj, Advocate Sr.1068

TEJ(CO)
Eu 22.1.15

W.A.No.1921 of 2012

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