

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.10851 of 2003

Paulraj

...Petitioner

Vs.

1.The Additional Chief Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin - 628 001.

2.The Executive Engineer,
Distribution/Rural
Tuticorin.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the first respondent herein relating to the order in LR.No.662/AEE/G1/AE2/F.Doc/2003 dated 25.03.2003 in respect of the service connection bearing No.HTSC No.191 of the petitioner.

For Petitioner : Mrs.A.L.Gandhimathi
For RR1 & RR2 : Mr.P.Gunaraj

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mrs.A.L.Gandhimathi, learned Counsel appearing for the petitioner and Mr.P.Gunaraj, learned counsel for the respondents.

3.This Writ Petition has been filed challenging the order passed by the first respondent dated 25.3.2003, in and by which the petitioner has been held liable to pay the extra levy on account of theft of energy which was detected in the service connection bearing No.HTSC No.191.

4.At the time when the writ petition was entertained, an order of interim stay was granted on 8.4.2003, subject to

certain conditions and as the conditions are complied with the interim order was made absolute on 23.1.2004.

5.The learned counsel for the petitioner submits that the matter may be referred to lok adalat.

6.On a perusal of the order sheet, it is seen that earlier the matter was referred to Lok Adalat and at that time, the petitioner and his counsel did not appear and the respondent's counsel appeared and stated that there was no possibility of settlement. Therefore, the Lok Adalat has sent the papers back to this Court.

7.I have perused the affidavit filed in support of the petition and the grounds raised, from which it is seen that the petitioner is seeking to raise factual issues in the matter. So far as the allegation of violation of principles of natural justice is concerned, it is seen that pursuant to the order passed by the Hon'ble Division Bench dated 17.12.2002, in W.A.No.3636 of 2002, the petitioner was afforded an opportunity. In my view the petitioner could avail the alternate remedy provided under the Statute. In fact, the impugned order also specifically states that the petitioner can avail the appeal remedy within a period of 60 days from the date of receipt of the order.

8.In the affidavit filed in support of the writ petition, no justifiable grounds have been raised to bypass the appeal remedy, which in my view is not only effective, but also efficacious. In the counter affidavit filed by the respondents it is stated that they have followed the principles of natural justice and the petitioner has been afforded an opportunity to examine the witness and also to cross examine the Inspecting Officer. Further, it is stated that clause 12 of Terms and Conditions of Supply of Electricity (theft energy), states that the petitioner has to pay 40% of the extra levy for stay of all further proceedings.

9.In the light of above facts, it is evidently clear that in order to consider the correctness of the impugned proceedings, facts have to be gone into and it has to be re-appreciated, for which the petitioner has to approach the appellate authority. This Court is conscious of the fact that the writ petition was filed in 2003 and it is pending till date, the party will not be normally relegated to avail the alternate remedy. However, this Court is satisfied that on account of the serious factual issues raised by the petitioner, for any challenge to the impugned order the petitioner has to necessarily avail the alternate remedy.

10. Accordingly, the Writ Petition is disposed of by directing the petitioner to file an appeal before the appellate authority after complying with all the conditions required under the Statute and if such appeal is filed within a period of 60 days from the date of receipt of a copy of this order, the appellate authority shall consider the same without reference to limitation and on such appeal being filed the appellate authority shall dispose of the same after affording an order of personal hearing to the petitioner and compliance of condition provided under clause 12 of the Terms and Conditions of Supply of Electricity and pass final orders within a period of three months thereafter. Till final orders are passed in terms of the above direction, the order of stay granted by this Court shall continue. In the event the petitioner fails to file an appeal within sixty days, liberty granted by this Court and the benefit of this order will not enure to him and the writ Petition would stand automatically dismissed and the respondents are entitled to proceed further for recovery, in accordance with law. No costs.

Sd/
ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

rpa

To

1. The Additional Chief Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin - 628 001.

2. The Executive Engineer,
Distribution/Rural
Tuticorin.

+1 CC to Mrs. A.L. Gandhimathi Advocate. SR.NO. 64196

+1 CC to MR. S.K. Raameshuwar Advocate. SR.NO. 64788

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CO-AK

JD 18/12/2015