

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.5292 and 5293 of 2015
and
M.P.Nos.1 and 1 of 2015

1.Dexterity KPO Services (P) Ltd.,
rep. by its Authorized Signatory,
Rathan Raj. ...Petitioner in W.P.5292 of 2015

2.Dexterity Business Analysts (P) Ltd.,
rep. by its Authorized Signatory,
Rathan Raj ...Petitioner in W.P.5293 of 2015

Vs.

The Assistant Executive Engineer,
Ambattur Industrial Estate,
C.E.D.C./West/TANGEDCO,
Chennai - 600 058. ... Respondents in both W.Ps.

Prayer in W.P.No.5292 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records relating to the provisional assessment order made in Lr.No.AEE/O&M/IE/ABT / F.TEdoc/D.336/2013, dated 20.11.2013, and the consequential impugned orders made in Lr.No.AEE/O&M/IE/Ambattur/F.Apts/D464/2015, dated 17.02.2015, and consequential communication made in Lr.No.AEE/O&M/IE/Ambattur/F.Apts/D474/2015 dated 25.02.2015, issued by the respondent and to quash the same, and to forbear the respondent from disconnecting electricity service connection, bearing S.No.035-002-1242 in the name of the petitioner at Ambattur Industrial Estate, Ambattur, Chennai -600 058.

Prayer in W.P.No.5293 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records relating to the provisional assessment order made in Lr.No.AEE/O&M/IE/ABT / F.TEdoc/D.337/2013, dated 20.11.2013, and the consequential impugned orders made in Lr.No.AEE/O&M/IE/Ambattur/F.Apts/

D463/2015, dated 17.02.2015, and consequential communication made in Lr.No.AEE/O&M/IE/Ambattur/F.Apts/D475/2015 dated 25.02.2015, issued by the respondent and to quash the same, and to forbear the respondent from disconnecting electricity service connection, bearing S.No.035-002-693 in the name of the petitioner at Ambattur Industrial Estate, Ambattur, Chennai -600 058.

For Petitioners : Mr.K.Alakendran

For Respondent : Mr.P.R.Dhilipkumar
Standing Counsel

COMMON ORDER

Since the issue involved in both Writ Petitions and the parties are one and the same, the Writ Petitions have been taken up together and disposed of by this common order.

2. Heard Mr.K.Alakendran, the learned counsel appearing for petitioners and Mr.P.R.Dhilipkumar, the learned Standing Counsel for the respondent.

3. The petitioners have filed these Writ Petitions, praying for issuance of a writ of certiorarified mandamus, to quash the proceedings, viz., the provisional assessments, dated 20.11.2013, issued by the respondent, and the consequential communication, dated 17.02.2015 and 25.02.2015, and to forbear the respondent from disconnecting electricity service connection given to the petitioners' Industrial Estate .

4. Earlier, the petitioners have approached this Court on the same issue, when electricity supply was disconnected, by filing Writ Petitions in W.P.Nos.31265 and 31266 of 2013, for issuance of a writ of mandamus to direct the respondent herein to restore the electricity supply and to give them an opportunity to submit their objection to the provisional assessments, dated 13.11.2013. The Writ Petitions were heard by this Court and disposed of by separate orders, dated 19.11.2013. The operative portion of the order passed in W.P.No.31265 of 2013 reads as follows:-

" 12. In the case hand, the petitioner is yet to submit his objections to the provisional assessment. Nevertheless, to strike at the balance between the parties and to alleviate the grievance of the petitioner, an entrepreneur in developmental activities in software applications, this Court deems it

fit to direct the petitioner to pay 50% of the amount, now determined by way of a provisional assessment i.e. Rs.6,56,159/- to the Superintending Engineer, TANGEDCO, Ambattur Industrial Estate, Ambattur, Chennai, the first respondent and on such deposit to the said authority, and on production of the receipt, respondents 1 and 2 shall restore the service connection in S.No.035-002-693, forthwith.

13. It is made clear that the deposit of the abovesaid amount would not foreclose the right of the petitioner to question the propriety and the manner in which the computation has been done.

14. With the above directions, the Writ Petition is disposed of".

Likewise, the petitioner in W.P.No.31266 of 2013 was directed to pay a sum of Rs.59,545/- to the Superintending Engineer, and restoration of electricity service connection was ordered subject to the production of receipt for effecting payment.

5. Pursuant to the above directions issued in W.P.No.31265 of 2013 and W.P.No.31266 of 2013, the petitioners complied with the condition and paid the amount, as directed to be remitted. Pursuant to which, provisional assessments were issued to the petitioners on 20.11.2013, which, in fact, was on the same lines, as that of the earlier provisional assessments, dated 13.11.2013. The respondent thought fit to issue fresh proceedings because of intervention of this Court in earlier Writ Petitions, wherein, directions were issued to the Authority as well as condition was imposed on the petitioners. The petitioners submitted their objections on 29.11.2013. In the objections, the petitioners have stated that the provisions of Section 135 of the Indian Electricity Act would not stand attracted to the facts of the cases, but, after the petitioners filed their objections, the respondent has passed the impugned orders, dated 17.02.2015 and 25.02.2015, directing the petitioner in W.P.No.5292 of 2015 to remit a sum of Rs.59,545/- and the petitioner in W.P.No.5293 of 2015, to remit a sum of Rs.6,56,159/- towards penal charges. The provisional assessments and the consequential orders, dated 17.02.2015 and 25.02.2015, demanding payment of penal charges are impugned in these Writ Petitions.

6. The learned Standing Counsel for the respondent/Corporation invited the attention of this Court to the averments set out in the counter affidavits, and it would

be sufficient to take note of the averments made in para No.4.10 of the counter affidavits, wherein, it has been stated that the petitioners, after detection of the misuse of tariff, had applied for a tariff change from industrial to commercial and the same was given effect from 10.12.2013, and at present, the petitioners electricity connection is under commercial category for the tenant M/s.Astroved Pvt. Ltd and the petitioners have clearly understood that they have committed misuse of tariff and also agreed to the same. Though such a stand has been taken by the respondent in the counter affidavits, the impugned orders, dated 17.02.2015 and 25.02.2015, does not reflect the same.

7. It is settled legal position that when an order is tested before the Court to its validity, it should sustain itself for the reasons set out in the order, and therefore, reasons cannot be substituted or supplanted in the form of counter affidavit. Equally settled is the legal position that the order, without reason is illegal, and liable to be set aside. The impugned orders are one such example, wherein, no reason has been assigned by the respondent while passing the same, however, on that ground, the provisional orders of assessment, dated 20.11.2013, cannot be quashed, since they are in fact replica of the earlier provisional assessments, dated 13.11.2013, which were not set aside by this Court in its earlier orders, dated 19.11.2013, made in W.P.Nos.31265 and 31266 of 2013. Therefore, all that could be done is to remand the matters to the respondent for fresh consideration of the petitioners' objections.

8. For all the above reasons, the Writ Petitions are partly allowed, and the impugned orders, dated 17.02.2015 and 25.02.2015 are set aside and the matters are remanded to the respondent for fresh consideration of the petitioners' objections, dated 29.11.2013, to the provisional orders of assessment, dated 20.11.2013 and after affording an opportunity of personal hearing to the petitioners, the respondent shall pass orders on merits and in accordance with law within a period of 4 weeks from the date on which, personal hearing is concluded. Till such time, the electricity service connection shall not be disconnected for non compliance of the demand made in the provisional orders of assessment. No costs. Consequently, connected Miscellaneous Petitions are closed

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sd

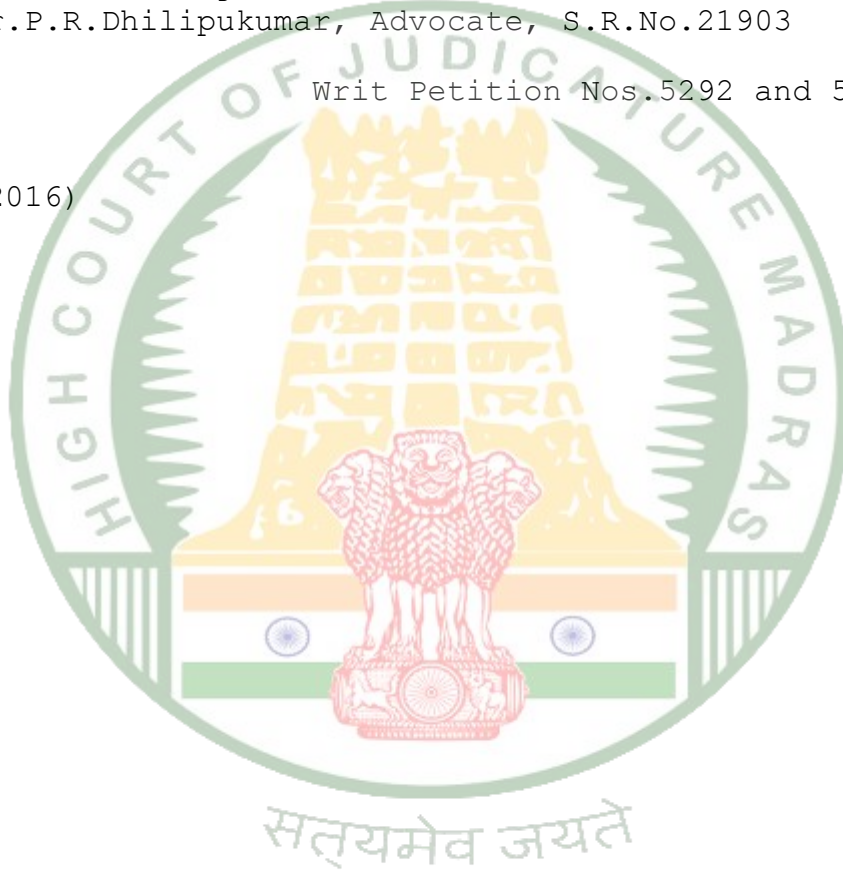
To

The Assistant Executive Engineer,
Ambattur Industrial Estate,
C.E.D.C./West/TANGEDCO,
Chennai - 600 058.

+2cc's to Mr.G.Ethirajulu, Advocate, S.R.Nos.22618 & 22617
+1cc to Mr.P.R.Dhilipukumar, Advocate, S.R.No.21903

Writ Petition Nos.5292 and 5293 of 2015

MSM(CO)
CA(28/04/2016)



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