

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.8128 OF 2007

ORDER :

This writ petition, filed under Article 226 of Constitution of India, challenges the proceedings bearing No.4955/GNT/DE/A/VJA/Doc.No.NRT-2129/D.No.5708, dated 18.08.2006 of the Divisional Engineer, Assessments Division, APSPDCL, Vijayawada-3rd respondent, as confirmed by the 2nd respondent-Superintending Engineer vide proceedings in SE/A/TPT/FAO/F.No.53(A)/10-6/GNT/D.No.495/06, dated 28.10.2006.

According to the petitioner, he is the owner of small shop with 9 feet x 9 feet dimensions situated at Narsaraopet town, Guntur District and the said premises has electricity connection bearing No.31125. It is stated in the affidavit filed in support of the writ petition that the said shop was in occupation of the petitioner till 06.02.2006 and from 07.02.2006, the petitioner leased out the said shop to 5th respondent for running an Ice Cream Shop. Followed by an inspection on 09.06.2006, the 3rd respondent-Divisional Engineer issued a show cause notice dated 21.06.2006, provisionally assessing a sum of Rs.1,16,126/-. Thereafter, the 3rd respondent herein issued an order vide proceedings No.4955/GNT/DE/A/VJA/ Doc.No.NRT-2129/D.No.5708, dated 18.08.2006, finally assessing a sum of Rs.98,933/-. Thereafter, the 5th respondent filed an appeal before the 2nd respondent herein-Superintending Engineer, who

by way of an order dated 28.10.2006, confirmed the final assessment order passed by the 3rd respondent.

This Court while ordering Rule nisi on 19.04.2007, in WPMP.No.10440 of 2007 granted interim direction as prayed for, on condition of the petitioner depositing half of the amount indicated in the order of final assessment, within a period of four (04) weeks from that date.

It is submitted by the learned counsel for the petitioner that the petitioner deposited the said amount. According to the learned counsel for the petitioner, the orders impugned are highly illegal, arbitrary and in violation of principles of natural justice, as the respondents herein did not issue any show cause notice nor afforded opportunity to the petitioner herein, before fixing the liability by way of the impugned order.

Counter affidavit deposited by the 2nd respondent is filed on behalf of the respondents herein. In the said counter, there is no whisper as regards to issuance of any notice to the petitioner herein. On the other hand, it is stated that all the notices were issued to the 5th respondent. The statement of the petitioner that no notice was given prior to the fixation of the liability, is not denied by the respondents. Therefore, the said action is in violation of principles of natural justice.

Having heard the learned counsel for the petitioner and the learned Standing counsel for the respondents and taking into consideration the factum of depositing of half of the demanded amount by the petitioner, this Court deems it appropriate to dispose of the present writ petition, directing the

2nd respondent to reconsider the issue after giving notice and opportunity to the petitioner herein.

For the aforesaid reasons, the writ petition is partly allowed, setting aside the order of the 2nd respondent dated 28.10.2006 and the matter is remanded to the 2nd respondent for fresh consideration, in accordance with law, after issuing notice and affording opportunity to the petitioner. Till the said exercise attains finality, the interim order granted by this Court in WPMP.No.10440 of 2007 dated 19.04.2007 shall continue to operate. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

11.07.2017
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A.V.SESHA SAI, J



