

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

WRIT PETITION No.15170 OF 2006

ORDER:

Heard the learned counsel for the petitioner, Sri D.Chinnappa Reddy, and Smt Jagarlamudi Koteshwari Devi, learned Standing counsel for the respondents.

The orders of the 2nd respondent passed vide proceedings No.CGM/O & P&MM/APSPDCL/TPT/GM/EA/F/D.No.313/06, dated 23.05.2006 and consequential orders of the 1st respondent vide Lr.No.CE/ZONE/VJA/ADE/AE.II/Asses/F.Doc./D.No.587/06, dated 05.07.2006, are under challenge in the present writ petition. A notice of provisional assessment was issued by the 3rd respondent-the Superintending Engineer in respect of service connection of the petitioner assessing the amount as Rs.3,81,450/-.

Questioning the validity of the said provisional notice, dated 24.04.2005, petitioner filed W.P.No.11120 of 2005. This Court by way of an order, dated 10.05.2005, allowed the said writ petition with costs of Rs.5,000/-. Thereafter, Superintending Engineer-3rd respondent issued final assessment vide proceedings No.SE/A/TPT/FAO/D.No.646/05, dated 29.08.2005, fixing the liability as Rs.3,83,632/-. Challenging the validity of the said assessment order, petitioner preferred an appeal before the 1st respondent-Chief Engineer on 17.12.2005. Thereafter, the petitioner filed W.P.No.72 of 2006 and this Court by way of an order, dated 03.01.2006, disposed of the said writ petition, directing the 5th respondent to consider the application of the

petitioner for grant of stay pending appeal on condition of the petitioner filing proof of payment of 1/3rd amount within three weeks.

According to the learned counsel for the petitioner, the amounts were paid by the petitioner on 10.02.2006. Subsequently, vide Lr.No.CE/Z/VJA/ADE/AE-II/F.DOC/F.Doc/ D.No.2508/06, dated 21.02.2006, the Chief Engineer, APSPDCL, Vijayawada, transmitted the case file SC.No.10 of Nagireddy Palem (V), Bellamkonda (M), Guntur (Dt) for reconsideration of the consumer's appeal with a further direction to Superintending Engineer to communicate the final order, after finalizing the consumer's appeal. Thereafter, Superintending Engineer passed an order vide proceedings No.SE/A/TPT/FAO/F.No./(GNT)/2-06/D.No.1011/06, dated 24.02.2006, fixing the liability as Rs.16,275/-. Subsequently, vide letter dated 23.05.2006, the Chief General Manager directed the Chief Engineer, Vijayawada Zone to finalise the appeal and by virtue of Lr.No.CE/ZONE/VJA/ADE/AE.II/Asses/F.Doc./ D.No.587/06, dated 05.07.2006, the Chief Engineer intems of instructions of the Chairman and Managing Director-APSPDCL Tirupati, cancelled the revised Final Assessment orders issued by the Superintending Engineer on 24.02.2006 fixing the liability as Rs.16,275/-.

The principal contention advanced by the learned counsel for the petitioner is that the order dated 23.05.2006, and consequential order dated 05.07.2006 are in total violation of principles of natural justice, as the same are not preceded with any notice or any opportunity of hearing to the petitioner herein.

Infact, in the affidavit filed in support of the writ petition, it is stated by the petitioner that before issuing the said orders, the respondents did not give any notice nor afforded an opportunity to the petitioner herein. The said averment made in the writ affidavit is not denied by the respondents herein in the counter affidavit filed before this Court. Therefore, the said averments are required to be taken as true. It is settled and well established proposition of law that any action which has civil consequence must necessarily be preceded by a notice and opportunity of being heard to the person likely to be affected by such action. In the instant case, the said principle is followed in breach. Therefore, the said action is in violation of principles of natural justice. The present writ petition has to succeed on the said ground.

For the aforesaid reasons, the writ petition is allowed, setting aside the impugned orders and the matter is remitted to 1st respondent-Chief Engineer to consider the issue afresh after giving notice and opportunity of hearing to the petitioner. Till the said exercise attains finality, interim order, dated 24.07.2006, passed by this court in WPMP.No18890 of 2006 shall continue to remain in operation. No costs.

As a sequel, miscellaneous petitions, pending, if any shall stand closed.

A.V.SESHA SAI, J

04.07.2017
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